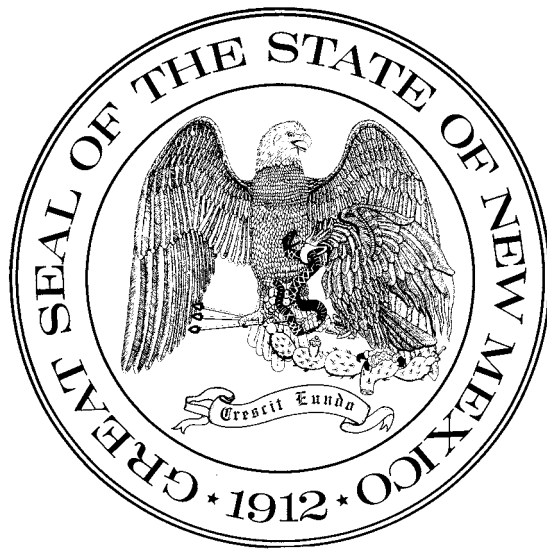


WATER AND NATURAL RESOURCES COMMITTEE

2006 FINAL REPORT



Santa Fe, New Mexico
December 2006

WORK PLAN

2006 APPROVED WORK PLAN AND MEETING SCHEDULE
for the
WATER AND NATURAL RESOURCES COMMITTEE

Committee Members:

Rep. Joe M Stell, Chair
Sen. Carlos R. Cisneros, Vice Chair
Sen. Sue Wilson Beffort
Rep. Ray Begaye
Rep. Joseph Cervantes
Sen. Dede Feldman
Sen. Mary Jane M. Garcia
Rep. Dona G. Irwin
Rep. Larry A. Larrañaga

Rep. Kathy A. McCoy
Sen. Cynthia Nava
Sen. Steven P. Neville
Rep. Andy Nunez
Sen. Mary Kay Papen
Sen. H. Diane Snyder
Rep. Mimi Stewart
Rep. Sandra L. Townsend
Rep. Don L. Tripp

Advisory Members:

Sen. Rod Adair
Sen. Vernon D. Asbill
Rep. Richard P. Cheney
Rep. Anna M. Crook
Rep. Candy Spence Ezzell
Sen. Clinton D. Harden, Jr.
Sen. Timothy Z. Jennings
Sen. Gay G. Kernan
Rep. Rhonda S. King
Rep. Ben Lujan

Rep. James Roger Madalena
Rep. Terry T. Marquardt
Rep. Danice Picraux
Sen. Leonard Lee Rawson
Sen. Nancy Rodriguez
Sen. John C. Ryan
Rep. Henry Kiki Saavedra
Sen. Leonard Tsosie
Rep. Peter Wirth
Rep. Eric A. Youngberg

Work Plan

The legislative council requested all interim committees to focus on a few critical issues this year. The water and natural resources committee proposes to focus on the following primary topics:

1. funding the water trust fund;
2. financing large water projects; and
3. drought and the need to conserve water.

Agenda items that the committee will hear testimony on include:

- water rights files transfers out of field offices;
- the proposed Surface Owner Protection Act;
- the definition of surface water;
- acequia issues;
- bosque projects;
- the proposed Land, Wildlife and Clean Energy Act;
- the Forests and Watershed Institute at Highlands University; and

- private water development financing.

2006 APPROVED MEETING SCHEDULE

<u>Date</u>	<u>Location</u>
June 16	Santa Fe
July 18-19	Santa Fe
August 21-22	Las Vegas
September 21-22	Elephant Butte
October 12-13	Artesia
November 29-30	Santa Fe

AGENDAS

Revised: June 13, 2006

**TENTATIVE AGENDA
for the
WATER AND NATURAL RESOURCES COMMITTEE
June 16, 2006
Room 322, State Capitol**

Friday, June 16

10:00 a.m.	Call to Order —Representative Joe M Stell, Chair
10:15 a.m.	Governor's Water Agenda for the 2007 Regular Session —Bill Hume, Governor's Office
11:00 a.m.	2006 Interim Scope of Work, Itinerary and Meeting Schedule
12:00 noon	Adjourn

Revised: July 14, 2006

**TENTATIVE AGENDA
for the
SECOND MEETING
of the
WATER AND NATURAL RESOURCES COMMITTEE
July 18-19, 2006
Room 307, State Capitol**

Tuesday, July 18

10:00 a.m. **Call to Order**

—Representative Joe M Stell, Chair

10:15 a.m. **Water Conservation**

—John Longworth, Office of the State Engineer

—Mark Sanchez, Ex. Director, Albuquerque-Bernalillo County Utility Authority

—John Stomp, Water Resources Manager, City of Albuquerque

—Phil King, New Mexico State University

12:00 noon **Lunch**

1:30 p.m. Regional and Community Water Systems

—Frank Coppler

3:00 p.m. **Water Augmentation Technologies**

—Dean Gabriel, Brac Systems

—Danny Carrigan, Brac Systems

—Roderick Mays, Brac Systems

4:00 p.m. **Enhancing Water Availability**

—Sigmund Silber

5:00 p.m. **Recess**

Wednesday, July 19

9:00 a.m. Briefing on Implementation of the Gila Settlement

—Craig Roepke, Deputy Director and Statewide Projects Bureau Chief, Interstate Stream Commission (ISC)

10:00 a.m. **Salt Basin Water Study Status Report**

—Craig Roepke, ISC

11:00 a.m. Land, Wildlife and Clean Energy Act Legislation

—J.D. Bullington, World Wildlife Fund Lobbyist

—Caren Cowan, Executive Director, NM Cattle Growers' Association

—Odes Armijo-Castor, Reusable Energy Industries Association of NM

12:00 noon **Adjourn**

Revised: August 14, 2006

**TENTATIVE AGENDA
for the
THIRD MEETING
of the
WATER AND NATURAL RESOURCES COMMITTEE
August 21 and 22, 2006
Sala de Madrid
801 University Avenue
New Mexico Highlands University
Las Vegas**

Monday, August 21

- 10:00 a.m. **Call to Order**
—Representative Joe M Stell, Chair
- Welcome**
—Dr. Manuel T. Pacheco, President, New Mexico Highlands University
—Henry Sanchez, Mayor, City of Las Vegas
—Leroy Sanchez, President, Luna Community College
- 10:15 a.m. **Acequia Revitalization Initiatives**
—Paula Garcia, Director, New Mexico Acequia Association
- 11:00 a.m. **Forestry and Watershed Restoration Institute, Highlands**
—Ron Gardiner
—Butch Blazer, State Forester
—Walter Dunn, U.S. Forest Service
—Jose C'de Baca, Acting Director
- 12:00 noon **Lunch**
- 1:30 p.m. **Clean Energy Initiatives**
—Craig O'Hare, Energy, Minerals and Natural Resources Department
- 2:30 p.m. **Aquifer Mapping**
—Peter Scholle, Bureau of Geology and Mineral Resources (BGMR), New Mexico Tech
—Paul Bauer, BGMR, New Mexico Tech
—Peggy Johnson, BGMR, New Mexico Tech

3:30 p.m. **Climate Change**
—Anne Watkins, Office of the State Engineer (OSE)
—Dr. Dave Gutzler, University of New Mexico
—Dr. Gregg Garfin, Climate Assessment for the Southwest (CLIMAS),
University of Arizona

5:00 p.m. **Recess**

Tuesday, August 22

9:00 a.m. **Office of the State Engineer Enforcement Procedures**
—D.L. Sanders, General Counsel, OSE
—Hilary Lamberton, Counsel, OSE

10:00 a.m. **Arsenic Removal Technologies**
—Norbert Barcena, President and CEO, ARS USA

11:00 a.m. **Eastern New Mexico Rural Water System Status**
—Scott Verhines, Program Manager, Eastern New Mexico Water Authority

12:00 noon **Adjourn**

TENTATIVE AGENDA
for the
WATER AND NATURAL RESOURCES COMMITTEE

9:00 a.m.	Eminent Domain —Janet Jarratt, Landowner
10:00 a.m.	Water System Governance —Anne Watkins, Office of the State Engineer
11:00 a.m.	Gila River Issues —Dutch Salmon, Chair, Gila Conservation Coalition
12:00 noon	Salt Cedar Removal —Tim Carlson, Tamarisk Coalition
1:00 p.m.	Waters Rights Holders Issues —D. H. Velzy, President, Conservation Coalition of Sierra County Well Owners
2:00 p.m.	Adjourn

Revised: October 10, 2006

**TENTATIVE AGENDA
for the
WATER AND NATURAL RESOURCES COMMITTEE**

**October 12-13, 2006
Central Valley Electric Cooperative
1505 N. 13th Street
Artesia**

Thursday, October 12

- 10:00 a.m. **Call to Order**
 —Representative Joe M Stell, Chair
- Welcome to Artesia**
 —Mayor Manuel Madrid
- 10:05 a.m. **Elk Population Management in the Sacramento Mountains**
 —R.L. Posey, Landowner
 —Leo Sims, Chair, State Game Commission
- 11:30 noon **Lunch**
- 1:00 p.m. **Water Rights Files of the Office of the State Engineer**
 —Representative Candy Spence Ezzell
 —A.J. Olsen, Hennighausen and Olsen
- 2:00 p.m. **Hydrogeology of the Tularosa Basin**
 —Kay Havenor, Hydrogeologist
- 3:00 p.m. **Engineering Community's Prioritization of Water Projects**
 —Brian Burnett, American Council of Engineering Companies
 —Scott Verhines, President, New Mexico Society of Professional Engineers
- 4:00 p.m. **Subdivision Approval Contingent on Water Rights**
 —Lauren Ketcham, Environment New Mexico
- 5:00 p.m. **Recess**

Friday, October 13

- 9:00 a.m. **Soil and Water Conservation Districts**
—Debbie Hughes, Executive Director, New Mexico Association of Conservation Districts
- 10:00 a.m. **National Pollution Discharge Elimination System (NPDES) Primacy**
—Marcy Leavitt, Chief, Surface Water Quality Bureau, Department of Environment
—Tracy Hughes, General Counsel, Department of Environment
- 11:00 a.m. **Regulatory Reform**
—Sayuri Yamada, Association of Commerce and Industry
—T.J. Trujillo, Attorney, Gallagher and Kennedy Attorneys
- 12:00 noon **Working Lunch**

Water Rights Transfers from Artesian Conservancy Districts
— Brent Bullock, Pecos Valley Artesian Conservancy District
- 1:00 p.m. **Adjourn**

Revised: November 28, 2006

**TENTATIVE AGENDA
for the
WATER AND NATURAL RESOURCES COMMITTEE
November 29 and 30
Room 307, State Capitol**

Wednesday, November 29

9:00 a.m. **Call to Order**

—Representative Joe M Stell, Chair

Surface Owners' Protection

—Bob Gallagher, New Mexico Oil and Gas Association

11:00 a.m. **Gila River Settlement**

Salt Basin/Sacramento Mountains Hydrologic Study

—Craig Roepke, Interstate Stream Commission

—Linda Weiss, Director, United States Geological Survey Water Science Center

12:00 noon **Lunch**

1:30 p.m. **What New Mexico Can Do to Respond to Global Climate Change**

—John Hernandez

2:30 p.m. **Gallup/Navajo Project Status**

—John Leeper, Manager, Water Management, Navajo Nation

—Marc Edwards, City of Gallup, Consultant

—Lance Allgood, Utilities Director, City of Gallup

3:30 p.m. **Governor's Task Force on Eminent Domain**

—J.D. Bullington, Co-Chair

5:00 p.m. **Recess**

Thursday, November 30

9:00 a.m. **Office of the State Engineer/Interstate Stream Commission Issues**

- Rio Grande Compact Deliveries
- Pecos River Compact Deliveries
- Water Trust Board Project Selection
- "Year of Water" Proposals
- Water Rights (Diversion/Delivery/Consumptive Transfers)
 - John D'Antonio, State Engineer
 - Estevan Lopez, Director, Interstate Stream Commission

- 12:00 noon **Lunch**
- 1:30 p.m. **Middle Rio Grande Conservancy District Functions**
—Chuck DuMars, Attorney
- 2:30 p.m. **Legislative Proposals**
- Compliance Orders of the State Engineer's Office
 - Extend 40-Year Planning Period
 - Water and Wastewater Authorities
 - Water and Sanitation District Act Amendments
 - Water Trust Fund (Appropriation Request)
 - Salt Cedar Treatments (Appropriation Request)
 - Silvery Minnow Recovery (Appropriations Request)
 - Chile Production Research and Development at New Mexico State University (Appropriation Request)
 - Natural Resources Trustee (Appropriation Request)
 - Mercury Task Force (Appropriation Request)
 - Illegal Dumping on Bureau of Land Management Land (Appropriation Request and Memorial)
 - UNM Utton Center Ombudsman (Appropriation Request)
 - Acequia Governance Education, Training and Technical Assistance (Appropriation Request)
 - Aquifer Mapping (Appropriation Request)
 - Santa Cruz Reservoir Silt Removal (Capital Appropriations Request)
 - Game and Fish Department Management of Game Depredation (Memorial)
- 5:30 p.m. **Adjourn**

MINUTES

**MINUTES
of the
FIRST MEETING
of the
WATER AND NATURAL RESOURCES COMMITTEE**

**June 16, 2006
Santa Fe**

The first meeting of the Water and Natural Resources Committee was called to order by Representative Joe M Stell, chair, on Friday, June 16, 2006, at 10:15 a.m. in Room 322 of the State Capitol in Santa Fe.

Present

Rep. Joe M Stell, Chair
Sen. Carlos R. Cisneros, Vice Chair
Sen. Sue Wilson Beffort
Rep. Ray Begaye
Sen. Dede Feldman
Sen. Mary Jane M. Garcia
Rep. Dona G. Irwin
Rep. Larry A. Larranaga
Rep. Kathy A. McCoy
Rep. Andy Nunez
Sen. Mary Kay Papen
Sen. H. Diane Snyder
Rep. Mimi Stewart
Rep. Sandra L. Townsend

Advisory Members

Sen. Rod Adair
Rep. Anna M. Crook
Rep. Candy Spence Ezzell
Sen. Clinton D. Harden, Jr.
Rep. Rhonda S. King
Rep. Ben Lujan
Rep. Danice Picraux
Sen. Nancy Rodriguez
Sen. John C. Ryan

Staff

Gordon Meeks
Jeret Fleetwood
Mark Bolton

Absent

Rep. Joseph Cervantes
Sen. Cynthia Nava
Sen. Stephen P. Neville
Rep. Don L. Tripp

Sen. Vernon D. Asbill
Rep. Richard P. Cheney
Sen. Timothy Z. Jennings
Sen. Gay G. Kernan
Rep. James Roger Madalena
Rep. Terry T. Marquardt
Sen. Leonard Lee Rawson
Rep. Henry Kiki Saavedra
Sen. Leonard Tsosie
Rep. Peter Wirth
Rep. Eric A. Youngberg

Guests

The guest list is in the meeting file.

The meeting began with the introduction of members and staff.

Governor's Water Agenda for the 2007 Regular Session

Bill Hume, a policy advisor for Governor Richardson, provided the committee with an overview of the governor's water agenda for the next year. He explained that Governor Richardson recently stated that he intends to make the 2007 legislative session "the year of water". Mr. Hume pointed out that New Mexico water law will be 100 years old in 2007, and suggested the need for new dedication, focus and vision in water stewardship. He emphasized that such dedication will require collaboration between the executive and legislative branches. He also indicated that while many details regarding this new approach to water still need to be worked out, the legislature and the executive can fill in the blanks together.

Mr. Hume explained that the governor's focus on water for the 2007 session will actually begin this fall, when the governor's office will begin to call on voters to pass the constitutional amendment that makes the Water Trust Fund a permanent, constitutionally authorized fund. He noted that while the legislature had already set aside \$40 million during the 2006 legislative session for the Water Trust Fund, that amount would need to be increased and a dedicated revenue stream would be sought to enable the Water Trust Fund to grow.

Mr. Hume went on to state that the legislature and the governor would need to work together to refine the process of allocating capital outlay for water projects. He explained that every household in New Mexico should be entitled to an adequate supply of safe domestic water and that developing a strategy for achieving such a goal would begin with the state putting funding and expertise in place for allowing small water systems to be able to develop delivery systems. Mr. Hume also indicated that the governor's office would encourage the regionalization of water and wastewater systems. He explained that, since it would be a statewide effort, such regionalization would require the cooperation of all members of the legislature. Mr. Hume noted that approaching water system aid through a uniform, statewide process would require those with access to capital outlay funds to work in agreement with one another.

Next, Mr. Hume discussed the Rio Grande. He explained that water rights along that river have never been fully adjudicated and that such neglect needs to end. Mr. Hume noted that preliminary discussions between the governor's office and the Middle Rio Grande Conservancy District (MRGCD) had been held, and that the MRGCD expressed some willingness to help the Office of the State Engineer to compile a priority list and maps of water rights along the Rio Grande. He also indicated that the state will take a more active role in working with the MRGCD to ensure that operations along the middle Rio Grande are managed as efficiently as possible.

Mr. Hume went on to discuss some of the environmental concerns along the Rio Grande. He explained that, barring some kind of climatic change, it would be difficult to meet the water flow targets laid out in a biological opinion regarding the Rio Grande silvery minnow. Mr.

Hume suggested that, instead of waiting for flows in the river to become too small to keep the minnow alive, a broad-based discussion about alternative strategies for managing the river and habitat needs within water supply realities is needed.

Next, Mr. Hume discussed funding for some of the larger water projects in the state, such as the Ute pipeline project and some of the Indian water rights settlements. He noted that the governor had expressed his support for a financial commitment to the Indian water rights settlements at the signing of the Navajo, Aamodt and Taos settlements. Mr. Hume also acknowledged that while the legislature has signaled its intention to fund these settlements, meeting New Mexico's funding obligations for Indian water rights settlements must be done in the context of the federal government meeting its share.

Mr. Hume also discussed the potential for a water project in the salt basin, but he explained that a project there would be developed only after thorough studies determined that sufficient resources existed there and that depletion of the resources would not adversely affect nearby systems.

Next, Mr. Hume discussed the planning efforts regarding the 2004 Arizona Water Settlement Act. He reminded the committee that the Arizona water settlement has provided New Mexico with 14,000 acre-feet of additional water on the Gila River and up to \$128 million in federal funding. Mr. Hume explained that the governor's office has initiated a process of scientific studies and public participation aimed at developing an inclusive and well-informed strategy for further development of water resources in southwest New Mexico.

Finally, Mr. Hume summarized several of the recent water successes New Mexico has enjoyed. He noted the recent arrangement for deliveries below Eagle Nest Lake, as well as implementation of the Pecos River settlement. Mr. Hume did point out that while the state has funded much of the implementation of the Pecos River settlement, he believed that the region will have to assume a greater portion of the continuing costs. Mr. Hume also discussed projects funded by the Governor's Water Innovation Fund, explaining that the Governor's Blue Ribbon Water Task Force is studying the various projects so that the most successful of them can be publicized and replicated throughout the state. He also mentioned the implementation of the state water plan, active water resource management, regulations and limits on domestic wells and the pilot channel above Elephant Butte Lake, which helped New Mexico make its compact deliveries to Texas.

Mr. Hume concluded by emphasizing that cooperation between the governor and the legislature would help make the year of water a successful one.

Questions and comments focused on:

- introduction of bills that failed in past legislative sessions that addressed many of the governor's current priorities;
- involvement of the courts in water adjudications;
- settlement offers helping speed up long adjudication cases;
- the governor's veto of \$75 million for Indian water rights settlements;
- plans for smaller water systems in New Mexico;
- salt cedar removal in the San Juan River basin;
- involvement of the New Mexico Department of Agriculture in the governor's water agenda;
- growth and development issues in Dona Ana County;
- filing of a lawsuit that alleges that the statute governing the state engineer's ability to approve permits for domestic wells is unconstitutional;
- status of potential litigation between New Mexico and Texas over water;
- uses for grey water systems; and
- nature of river flow measurements and compact delivery obligations.

2006 Interim Scope of Work, Itinerary and Meeting Schedule

The committee developed the following work plan and approved the following meeting dates. The committee proposes to focus on the following primary topics:

1. funding the Water Trust Fund;
2. financing large water projects; and
3. the drought and the need to conserve water.

Agenda items that the committee will hear testimony on include:

- water rights files transfers out of field offices;
- the proposed Surface Owner Protection Act;
- the definition of surface water;
- acequia issues;
- bosque projects;
- the proposed Land, Wildlife and Clean Energy Act;
- the Forests and Watershed Institute at New Mexico Highlands University; and
- private water development financing.

Committee meeting dates and locations:

June 16, Santa Fe

July 18-19, Santa Fe

August 21-22, Las Vegas

September 21-22, Elephant Butte

October 12-13, Artesia

November 29-30, Santa Fe

There being no further business, the committee adjourned at 12:35 p.m.

**MINUTES
of the
SECOND MEETING
of the
WATER AND NATURAL RESOURCES COMMITTEE**

**July 18-19, 2006
Santa Fe**

The second meeting of the Water and Natural Resources Committee was called to order by Representative Joe M Stell, Chair, on Tuesday, July 18, 2006, at 10:10 a.m. in Room 307 of the State Capitol in Santa Fe.

Present

Rep. Joe M Stell, Chair
Sen. Carlos R. Cisneros, Vice Chair
Sen. Sue Wilson Beffort
Rep. Ray Begaye
Sen. Dede Feldman (July 18)
Sen. Mary Jane M. Garcia
Rep. Dona G. Irwin
Rep. Kathy McCoy
Sen. Cynthia Nava
Sen. Stephen P. Neville
Rep. Andy Nunez
Sen. Mary Kay Papen
Sen. H. Diane Snyder (July 19)
Rep. Mimi Stewart
Rep. Don L. Tripp (July 18)

Advisory Members

Sen. Vernon D. Asbill
Rep. Anna M. Crook
Rep. Candy Spence Ezzell
Sen. Clinton D. Harden, Jr.
Sen. Gay G. Kernan
Rep. Rhonda S. King
Rep. Ben Lujan
Rep. Danice Picraux
Sen. Leonard Lee Rawson (July 18)
Sen. Nancy Rodriguez
Sen. John C. Ryan (July 18)
Rep. Peter Wirth

Absent

Rep. Joseph Cervantes
Rep. Larry A. Larranaga
Rep. Sandra L. Townsend

Sen. Rod Adair
Rep. Richard P. Cheney
Sen. Timothy Z. Jennings
Rep. James Roger Madalena
Rep. Terry T. Marquardt
Rep. Henry Kiki Saavedra
Sen. Leonard Tsosie
Rep. Eric A. Youngberg

(Attendance dates are noted for those members not present for the entire meeting.)

Staff

Gordon Meeks
Jon Boller
Mark Bolton
Jeret Fleetwood

Guests

The guest list is in the original meeting file.

Tuesday, July 18

The committee members began by introducing themselves and the staff.

Water Conservation

John Longworth of the Office of the State Engineer (OSE) provided the committee with an overview of the urban water conservation programs administered by the OSE. He explained that the programs basically fall into two categories: those for water suppliers and those for the distribution of educational materials for residential consumers. Mr. Longworth noted that the conservation programs for water suppliers include programs to develop protocols, such as a standard means of performing water system audits and standardizing the gallons per capita per day calculation. He also pointed out that several publications, such as water conservation guides for public utilities and commercial, industrial and institutional water users, are available through the OSE.

Next, Mr. Longworth discussed the water conservation education materials for residential water consumers available through the OSE. He provided the committee with a list of these materials and pointed out that the water conservation publications produced by the OSE are free to residential customers. Mr. Longworth also discussed new residential conservation projects that the OSE is working on, such as a rooftop water harvesting manual and a residential irrigation calculator.

Finally, Mr. Longworth discussed water conservation educational materials available to K-12 students. He provided the committee with a list of classroom materials available from the OSE and outlined the Project WET outreach effort and some of the partnerships the OSE has formed through the project.

Questions and comments focused on:

- a method for notifying school districts about materials available from the OSE;
- the electronic availability of OSE's educational materials;
- the involvement of Native American students in Project WET;
- conservation efforts regarding water cooling equipment such as ice machines;
- water loss tracking data for municipalities;
- annual reports of municipal water losses;
- grey water systems as water conservation; and
- marketing of OSE products and publications.

Mark Sanchez and John Stomp of the Albuquerque Bernalillo County Water Authority provided the committee with an overview of the water authority's conservation goals and strategies. Mr. Sanchez explained that as Albuquerque's population grows and demand for limited water resources increases over the next 50 years, water conservation will play an increasingly important role as the water authority attempts to lessen its dependence on aquifer pumping. To illustrate, he provided the committee with charts indicating the projected increase in demand for water resources and the success that the community has had to date in conserving water. He noted that since 1995, per capita water use has been reduced from 250 gallons per day to 175 gallons per capita per day.

Mr. Sanchez went on to discuss other water conservation strategies, including leak detection strategies. He explained that a pilot project that used noise sensors to detect leaks in 250 miles of underground water pipelines found 52 leaks that could account for 200 million gallons of lost water per year. Mr. Sanchez also pointed out that the effort to retrofit homes with low-flow toilets saved the water authority 13,870,000 gallons of water in its first year.

Mr. Stomp provided the committee with an overview of the drought management strategies that the water authority is employing. He began by explaining that water levels in the aquifer underneath Albuquerque have dropped dramatically due to ground water pumping. Mr. Stomp went on to discuss the components of the water conservation program, such as low-flow toilet rebate programs, xeriscape rebate programs and use of a water waste ordinance. He also discussed drought management strategies, such as the four progressive stages of drought severity: advisory, watch, warning and emergency. Mr. Stomp explained that at the March 15, 2006 Albuquerque Bernalillo Water Authority Board meeting, a drought watch was declared, which would remain in effect until it is repealed by the authority or by November 1, 2006. He also discussed some of the measures that go into effect during a drought watch, such as a mandatory program of watering no more than three times per week using even/odd-numbered addresses, doubling water waste fees and increased water waste enforcement.

Questions and comments focused on:

- potential population growth accommodated by Albuquerque's current water rights at the consumption goal of 150 gallons per capita per day;
- the amount of San Juan Chama water available for Albuquerque;
- water harvesting rebates;
- waste water treatment and recycling;
- the definition of well wash;
- the effect of rainwater harvesting on aquifer recharge;
- the contract term of New Mexico's entitlement to San Juan Chama water;
- extending the 40-year water planning horizon to 70 years;
- a comparison of urban residential per capita use with rural residential per capita use;
- Intel's water use;
- Albuquerque's efforts to recharge the aquifer;
- the source of water losses and fines;
- the division of the San Juan-Chama project rights between the contractors;

- the water debt of the Middle Rio Grande Conservancy District to the city of Albuquerque;
- surcharges on excessive water users to foster conservation;
- disposition of revenues to the water department;
- water hydrants as leading sources of water system leakage;
- the fact that seven percent of the water diverted for use in the city is unaccounted for;
- statewide water conservation standards for commercial buildings;
- rebates and other water conservation incentives for developers;
- meter inaccuracies;
- the extraterritorial zone's subdivision water use and approval; and
- double dipping of sold water rights by Middle Rio Grande Conservancy District water rights holders.

Dr. Phil King of New Mexico State University (NMSU) provided the committee with an overview of some of the research he has conducted regarding irrigation water conservation. He began by discussing his background in water research for the committee, noting that he is an agricultural engineer at NMSU and that he has done some consulting work for the Elephant Butte Irrigation District (EBID) and the El Paso Irrigation District.

Dr. King explained that the OSE issued an order for the lower Rio Grande regarding metering of agricultural water in 2004. He noted that the turmoil that was expected as a result of the order never really materialized, pointing out that members of EBID had already been metering their water use. Dr. King emphasized that metering is important when considering water conservation, since it is impossible to conserve water without some knowledge of how much is available and how much is being used.

Dr. King went on to discuss the importance of clearly defining what water conservation actually is. He explained that defining conservation should begin with some definition of water use. To illustrate the difficulty in defining water use, Dr. King pointed out that while it is relatively easy to measure applied water, it is extremely difficult to measure depleted water.

Next, Dr. King discussed some of the potential unintended consequences of water conservation. He explained that much of the middle Rio Grande riparian ecosystem sustains itself from water seepage from nearby irrigation ditches and that lining those ditches to conserve water by reducing seepage could have some negative effect on the nearby riparian system. Dr. King also noted that rainwater harvesting may actually be robbing the aquifer of some of the water that it needs to recharge itself. He emphasized that it is impossible, in most systems, to separate ground water from surface water, and that depleting one resource will likely affect the other.

He said that the state needs a depletion-based water accounting system rather than a use-based system because the definition of "use" is confused with actual application of water. Use generally is considered to be synonymous with diversions, but there are significant depletions prior to any real "use". The full amount of water that is diverted for any use never arrives at the point of use because of depletions (evaporation, leakage, seepage, etc.). He said that people need

to be careful about the assumptions of what actually constitutes conservation, that some conservation methodologies may have the unintended consequence of depleting the overall available water. He enumerated four cautions: recognize contradictions in terminology; define conservation objectives more clearly; define constraints and secondary impacts; and recognize that surface and ground water cannot be separated — that they are interconnected.

Questions and comments focused on:

- the use of drip irrigation systems and their effect on aquifer recharge;
- net depletions caused by conservation technology;
- the percentage of return flow of diversion and the ratio of diversion to delivery;
- how depletion-based accounting might affect legislation;
- the efficiency of flood irrigation;
- consumptive use of water vs. depletive uses and the effect of interbasin water transfers on both;
- the need to "balance" depletions;
- the differences between different crops' duty of water;
- the amount of a water right the state engineer allows to be transferred from irrigation use to municipal use; and
- the impact of consumptive water use on water systems.

Regional and Community Water Systems

Frank Coppler of Coppler & Mannick, PC, provided the committee with testimony regarding the various powers and duties of private water corporations; public improvement districts; mutual domestic water consumer associations; water and sanitation districts; and city or county water utilities. For example, he pointed out which entities may issue bonds and which may not. Mr. Coppler went on to note that currently, there exist no simple means in statute for one entity to change itself into another kind as the population it serves grows. He also noted that many private water corporations are interested in changing themselves into mutual domestic water consumers for the purpose of being able to receive state funds.

Questions and comments focused on:

- the pros and cons of regulation of various entities;
- water and sanitation district use of eminent domain; and
- annexation procedures and jurisdictional issues of these organizations.

Water Augmentation Technologies

Dean Gabriel and Roderick Mays of Brac Systems provided the committee with a demonstration of a product marketed by their company that, once installed in a home, captures shower and washing machine water, cleanses it and reuses it to flush toilets. They explained that an average family of four uses 63,408 gallons of water per year and that roughly half of that amount is used for bathing and washing clothes. Mr. Gabriel and Mr. Mays claimed that their product could help residential water consumers save 30 to 40 percent on their annual water bill. They provided the committee with a schematic showing how their product is able to work in a typical house and explained some of the modifications that are available that would make the product more compatible in New Mexico, where homes typically do not feature basements.

Questions and comments focused on:

- the unit cost of \$1,575;
- whether statistics cited by Brac systems apply to typical New Mexican families;
- different-sized units for larger houses; and
- how water use has increased six-fold in New Mexico communities where the population has only increased by 100 percent.

The minutes of the June 16, 2006 meeting were adopted as submitted.

Enhancing Water Availability

Sigmund Sibler provided the committee with a list of technologies that might be employed to increase the quality and availability of water in New Mexico. He briefly discussed each of the technologies, such as mining deep and shallow brackish water; plains and mountain cloud seeding; aquifer storage and recovery, and large-scale surface water capture. Mr. Sibler went on to explain the costs involved with each of the technologies, the cost-benefit ratio of several of the technologies and regions of the state where particular technologies would likely be most effective. Mr. Sibler went on to discuss the obstacles to deployment of the various technologies. He summarized his presentation by noting that summer plains cloud seeding and large scale surface water capture were the two technologies that, if the obstacles to their deployment can be addressed, would likely benefit water users in New Mexico the most.

Questions and comments focused on:

- involvement of local governments in implementing water enhancement technologies;
- the council of governments as potential fiscal agents;
- supercooling temperatures required for rain to form and the effect on rainfall patterns due to global warming;
- ski resorts' use of cloud seeding;
- effectiveness of cloud seeding projects in southern New Mexico; and
- the potential of cloud seeding to cause hail and hail damage.

Staff noted that the presentation given by Frank Coppler raised questions that staff will likely be asking legislators during the session when they request bills to form regional water authorities. They pointed out that the old entity typically has to be dissolved in order to form a new one.

Representative Stell provided the committee with an update on a lawsuit involving water users in the Mimbres Basin that alleges that the statute allowing the OSE to issue permits for domestic wells is actually unconstitutional because it further divides a resource that is already fully allocated.

Wednesday, July 19

Briefing on Implementation of the Gila Settlement

Craig Roepke, Deputy Director and Statewide Projects Bureau Chief of the Interstate Stream Commission (ISC), provided the committee with an update on the 2004 Arizona Water Settlements Act, which provides New Mexico with 14,000 acre-feet of water and between \$66 million and \$128 million. He explained that two components of the settlement, the Gila River Indian Community Water Rights section and the Consumptive Use and Forebearance Agreement, are of particular interest to New Mexico. Mr. Roepke noted that the Gila River Indian Community Water Rights section provides New Mexico with the \$66-128 million, while the Consumptive Use and Forebearance Agreement allocates the 14,000 acre-feet of water to New Mexico.

Danielle Smith, also of the ISC, provided the committee with an update on the planning process regarding the funding available to New Mexico. She explained that beginning in 2012, annual deposits totaling \$66 million will be paid to the New Mexico Unit Fund, which is administered by the ISC. Ms. Smith went on to note that any expenditure from that fund must be approved by the ISC in consultation with the Southwest New Mexico Water Planning Group, which represents local governments, and must meet a water supply demand. She went on to explain that if New Mexico chooses to develop the additional 14,000 acre-feet of water made available through the settlement, additional funds up to a total of \$128 million are provided for. However, Ms. Smith cautioned that any development of additional water would have to, according to ISC policy, apply the best available science to fully assess and mitigate the ecological impacts on the area.

She indicated that, pursuant to terms of the settlement, it will be difficult for New Mexico to be able to use its additional 14,000 acre-feet, because respect for the "valuable ecology of the Gila" is mandated and additional water may only be diverted at flood stage of the river.

Coleman Smith, also of the ISC, provided the committee with testimony regarding the structure and goals of the Gila-San Francisco Coordinating Committee. She explained that representatives of the ISC, the Bureau of Reclamation, the U.S. Fish and Wildlife Service, the Office of the Governor and the Southwest New Mexico Water Planning Group form the Gila-San Francisco Coordinating Committee. Ms. Smith went on to explain that a number of subcommittees, many of them with scientific backgrounds, have been formed by the coordinating committee to advise the coordinating committee. She indicated that by 2009, the coordinating committee intends to produce a Coordination Act Report, which will be used to select options for development of water resources in southwestern New Mexico.

Mr. Roepke summarized the presentation, emphasizing that the people of New Mexico,

through the various planning entities, will have to decide by 2009 if and how they wish to develop the 14,000 acre-feet of water. The federal government requires notification by 2014 of what New Mexico wants to do with its additional 14,000 acre-feet and the money available for its use. The year 2009 is a tentative deadline for local interests to come to an agreement because the lead time for completing environmental impact statements and compliance with other regulations is about five years.

Sandia National Laboratory is providing scientific support for the studies at its expense. The presenters emphasized that the citizens of the region will make the decision. The total cost of the study and planning effort is estimated to be \$1,390,000, with some of that work being completed by the U.S. Fish and Wildlife Service.

Questions and comments focused on:

- economic development opportunities afforded by additional water and funding for development in southwest New Mexico;
- the negotiating process that netted New Mexico additional water and funding;
- Federal Endangered Species Act regulations that must be met before development can occur;
- the role of federal agencies in the process;
- whether the money for the settlement has already been appropriated by Congress;
- duplication of effort among subcommittees of the Gila-San Francisco Coordinating Committee;
- whether Arizona groups (who do not want New Mexico to use its share of the water because they want it) are trying to influence decisions on the Gila-San Francisco Coordinating Committee;
- the involvement of Phelps-Dodge Mining Corporation in the Gila-San Francisco Coordinating Committee;
- the Colorado River Compact history and parameters of the Central Arizona Project, of which the Gila is a component;
- Arizona environmental activists' participation in New Mexico's planning process for the Gila;
- the list of members of the southwest New Mexico water planning group;
- the annual flow of the Gila and its ability to meet endangered species requirements; and
- the national environmental movement's desire to preserve the last undammed river in the west.

The committee discussed an invitation to meet in Silver City and Deming next year, since the last time it met there was the 2004 interim.

Salt Basin Water Study Status Report

Craig Roepke provided the committee with an update on a study being conducted to determine whether there are sufficient water resources in an aquifer lying underneath the Salt Basin to begin pumping water from it for uses in other areas of New Mexico. He explained that the ISC had recently received data from Sandia Labs that indicated that safe yields of 15,000-

55,000 acre-feet of water could likely be pumped out of the aquifer. Mr. Roepke emphasized that the aquifer covers a large geographic area with complex geology.

Questions and comments focused on:

- the order of applications for pumping rights in the aquifer received by the ISC;
- the location of the Salt Basin;
- coordination among the experts for various components of a study to determine the capacity and develop the resource;
- the money received by Sandia Labs for conducting studies on the aquifer was in the form of tax credits;
- El Paso's and the Texas Salt Basin aquifer projects;
- adjudication of water rights in the Salt Basin;
- availability of water for nearby New Mexico communities;
- the prohibitive cost of infrastructure for moving water to other communities;
- the possibility of public/private partnerships to develop necessary infrastructure; and
- when the basin was "declared" a closed basin.

Land, Wildlife and Clean Energy Legislation

J.D. Bullington, a lobbyist for the World Wildlife Fund, provided the committee with testimony regarding the Land, Wildlife and Clean Energy Act (Senate Bill 407 and House Bill 188 from the 2006 session). He explained that a bill was introduced during the 2006 legislative session that allowed for conservation projects to be conducted on lands to be acquired from willing sellers. Mr. Bullington went on to indicate that a revenue stream for such land acquisitions could come from distributions from the oil and gas conservation tax, which would go into a new bonding fund and that money from the bonding fund could be leveraged against available federal money.

Odes Armijo-Caster of the Reusable Energy Industries Association of New Mexico also discussed the Land, Wildlife and Clean Energy Act. He explained that in past years, the legislature has appropriated funds for clean energy grants to help reduce energy costs for schools and governments. Mr. Armijo-Caster provided the committee with a list of some of the projects that had been conducted and noted that funding for grants this year was included in the 2006 Land, Wildlife and Clean Energy Act, which failed to pass. He noted that providing a dedicated funding stream for the Land, Wildlife and Clean Energy Act would allow the grants that help reduce energy costs for schools and governments to continue.

Caren Cowan, executive director of the New Mexico Cattle Growers' Association, told the committee that her organization supports the bill because agriculture is the third largest economic driver in the state, and the bill will help protect agriculture.

Questions and comments focused on:

- involvement of soil and water conservation districts in the Land, Wildlife and Clean Energy Act;
- the amount of distribution from the oil and gas conservation tax;
- the potential to attract matching federal money;
- the definition of conservation projects that would be eligible;
- the potential reduction of local tax bases by acquisition of land for public ownership;

- the history of the oil and gas conservation tax;
- the effort to reach out to different constituencies to reach consensus on the Land, Wildlife and Clean Energy Act;
- whether a funding stream is necessary to issue bonds;
- authorization by the legislature of projects under the Land, Wildlife and Clean Energy Act;
- opposition to use of the oil and gas conservation fund for this purpose;
- the average age of farmers and ranchers;
- the fact that the funding stream was a primary problem last year;
- the bonding authority assigned to the New Mexico Finance Authority and the bill skirting the existing New Mexico Finance Authority Act;
- management of land acquired under the act;
- the board's criteria for acquisition of land under the act and the degree of legislative oversight;
- the fact that representation on the board is not representative; and
- the potential to take land out of production or water out of beneficial use and duplication of other similar programs and laws.

Reese Fullerton representing the secretary of energy, minerals and natural resources told the committee that the bill is a priority of the governor, but that the administration is not wedded to a specific funding mechanism and that concerns expressed by the committee today will be addressed.

More comments and concerns expressed by the committee included:

- the potential for artificially bidding up the price of water rights by the Land, Wildlife and Clean Energy Act and increasing agricultural operating costs;
- the appearance of the act being a "sideways" method of controlling growth;
- the potential use of the money pursuant to the bill for conservation easements instead of fee simple title; and
- the lack of involvement of soil and water conservation districts in the negotiations for the bill.

There being no further business, the committee adjourned at 12:40 p.m.

MINUTES
of the
THIRD MEETING
of the
WATER AND NATURAL RESOURCES COMMITTEE
August 21-22
Las Vegas

The third meeting of the Water and Natural Resources Committee was called to order by Representative Joe M Stell, chair, on Monday, August 21, 2006, at 10:15 a.m. in the Sala de Madrid at New Mexico Highlands University in Las Vegas.

Present

Rep. Joe M Stell, Chair
Sen. Carlos R. Cisneros, Vice Chair
Rep. Ray Begaye
Rep. Joseph Cervantes
Sen. Dede Feldman
Sen. Mary Jane M. Garcia
Rep. Dona G. Irwin
Rep. Larry A. Larranaga
Rep Kathy A. McCoy
Sen. Steven P. Neville
Sen. Mary Kay Papen
Rep. Mimi Stewart
Rep. Sandra L. Townsend
Rep. Don L. Tripp

Absent

Sen. Sue Wilson Beffort
Sen. Cynthia Nava
Rep. Andy Nunez
Sen. H. Diane Snyder

Advisory Members

Sen. Rod Adair (August 21)
Sen. Vernon D. Asbill
Rep. Anna M. Crook
Rep. Candy Spence Ezzell
Sen. Clinton D. Harden, Jr.
Rep. Rhonda S. King
Rep. Ben Lujan
Rep. Terry T. Marquardt (August 22)
Rep. Danice Picraux
Sen. John C. Ryan
Rep. Peter Wirth

Rep. Richard P. Cheney
Sen. Timothy Z. Jennings
Sen. Gay G. Kernan
Rep. James Roger Madalena
Sen. Leonard Lee Rawson
Sen. Nancy Rodriguez
Rep. Henry Kiki Saavedra
Sen. Leonard Tsosie
Rep. Eric A. Youngberg

(Attendance dates are noted for those members not present for the entire meeting.)

Staff

Gordon Meeks
Jon Boller
Jeret Fleetwood

Guests

The guest list is in the original meeting file.

Monday, August 21

Dr. Manuel T. Pacheco, president of New Mexico Highlands University (NMHU), welcomed the committee to the university and to Las Vegas. He noted that August 21 was also the first day of classes for the fall semester and that NMHU is expecting record numbers of new student enrollees.

Acequia Revitalization Initiatives

Paula Garcia, director of the New Mexico Acequia Association, provided the committee with an update on acequia revitalization issues. She emphasized the importance of regional acequia associations, explaining that they are the workhorses of local acequia management. Ms. Garcia also discussed the importance of acequias, pointing out that acequias support biodiversity, help recharge aquifers, provide locally produced agriculture and act as a source of local knowledge. However, Ms. Garcia cautioned that several acequias in New Mexico are endangered by rapidly developing communities nearby, such as the Jemez, Gallinas and Hondo Valley acequia systems.

Ms. Garcia went on to explain that in order for acequias to continue to operate as they have for centuries, local governance of them must be strengthened. To help strengthen local acequia governance, the New Mexico Acequia Association has developed an acequia governance handbook and conducts workshops on acequia governance in areas across New Mexico. Ms. Garcia also noted that as agricultural land on acequia systems is taken out of production, concerns arise over whether the acequia as a whole can continue to operate properly, since the acequia depends on community involvement.

Questions and comments focused on:

- the proximity of endangered acequia systems to rapidly growing urban areas such as Santa Fe, Albuquerque and Rio Rancho;
- adjudication of acequia water rights;
- methods of measuring adjudicated water;
- the transfer of water rights;
- the sale of water rights; and
- the adoption of acequia bylaws.

Forestry and Watershed Restoration Institute, NMHU

Jose C'de Baca, acting director of the Forestry and Watershed Restoration Institute, provided the committee with a brief history and overview of the institute. He explained that there are two other similar institutions, but that New Mexico's is unique because of its focus on watershed health. Mr. C'de Baca also pointed out that the institute is in its infancy and that a nationwide search is underway for a permanent director. He also discussed several initiatives

that the institute is working on, including developing uses for the small diameter trees that are harvested from watersheds to improve their health and resistance to catastrophic fire; education of New Mexicans about forest and watershed health; and the formation of relationships with other New Mexico colleges and universities.

Walter Dunn of the United States Forest Service elaborated on the history of the Forestry and Watershed Institute at NMHU. He explained that the institute was modeled after a similar one in Arizona and that federal funding for the institute is leveraged with some state funding.

Butch Blazer, state forester, discussed the support of the State Forestry Division of the Energy, Minerals and Natural Resources Department for the institute. He noted that New Mexico has been receiving help from northern Arizona for some time now, but that a real need exists for New Mexico to have its own institute to help implement the recently approved statewide watershed health plan.

Ron Gardiner, consultant to NMHU, discussed his involvement with the institute. He explained that drought, fires and floods are all related to watershed management. Mr. Gardiner thanked the legislature for its support and noted that the institute will require the continued support of the state to achieve its mission.

Questions and comments focused on:

- jurisdictional problems in designing watershed restoration projects;
- how the number of trees per acre cleared is a function of site and local ecology and that the institute will be developing protocols for guidance;
- the urgency of the need to restore watersheds now rather than delay for more endless studies and analyses;
- the academic role of the institute;
- the number of students at NMHU majoring in fire management and other forestry-related subjects;
- collaboration with local fire departments;
- the number of national forests in New Mexico;
- why the expense of restoring watersheds is more than the market value of the land;
- the costs/benefits of watershed restoration;
- private landowners' access to information from the institute;
- biomass energy production from watershed restoration; and
- reporting to the legislature on agencies' use of the institute's information.

Clean Energy Initiatives

Joanna Prukop, secretary, Energy, Minerals and Natural Resources Department (EMNRD), and Craig O'Hare, special assistant for renewable energy for EMNRD, provided the committee with testimony regarding clean energy. They began by clarifying the definition of "clean energy", explaining that it is comprised of renewable energy sources such as solar, wind and biomass energy; increasing energy efficiency in buildings, appliances and vehicles; and clean fuels such as ethanol, biodiesel and hydrogen. Ms. Prukop and Mr. O'Hare noted that New Mexico enjoys a location that is well-suited to solar energy and discussed concentrating solar power (LCSP) initiatives, which involve the use of large parabolic troughs to create steam. They pointed out that CSP plant cost projections indicate that CSP is competitive with newer fossil fuel plants.

Second, Ms. Prukop and Mr. O'Hare discussed methods of increasing energy efficiency, particularly in buildings. They noted that increasing energy efficiency is perhaps the most important factor in reducing the impacts of high gasoline and natural gas costs. Ms. Prukop and Mr. O'Hare explained that construction of "green buildings", which are much more energy efficient, can raise initial construction costs by as much as two percent, but that the costs are offset within five years by reduced energy utility costs.

Third, Ms. Prukop and Mr. O'Hare discussed the emerging new energy economy. They explained that clean energy projects and related manufacturing jobs offer significant economic development opportunities for states and nations that opt to pursue them and that New Mexico is attempting to position itself to be a leader in the new energy economy.

Fourth, Ms. Prukop and Mr. O'Hare discussed several of the clean energy programs initiated in New Mexico over the past five years. Those programs included the 2004 hybrid vehicles excise tax exemption, the 2005 Efficient Use of Energy Act, the Clean Energy Grants Program, the renewable energy production tax credit and the renewable energy portfolio standard of 10 percent by 2011.

Finally, Ms. Prukop and Mr. O'Hare discussed several clean energy legislative initiatives for the 2007 legislative session. They explained that the number one clean energy priority would likely be the Renewable Energy Transmission Authority Act, which would provide for the planning, construction, financing and operation of energy transmission infrastructure in New Mexico. Ms. Prukop and Mr. O'Hare went on to explain that the act would create a pseudo-public entity that would function similarly to the New Mexico Finance Authority and would authorize revenue bonds for electricity transmission projects. They pointed out that similar acts passed through both houses of the legislature in 2006, but that time simply ran out on getting one of the acts through the other chamber. Other aspects Ms. Prukop and Mr. O'Hare discussed about the act were eminent domain, the makeup of the renewable energy transmission authority board and legislative oversight of the transmission authority. Other legislative initiatives Ms. Prukop and Mr. O'Hare discussed were amendments to the existing renewable energy production tax credit, an Advanced Energy Product Manufacturers Tax Credit Act and continued funding for the Clean Energy Grants Program.

Questions and comments focused on:

- the Taxation and Revenue Department's consistent issuance of adverse fiscal impact reports on tax incentives for alternative energy investments;
- solar energy set-aside provisions in the Public Regulation Commission's renewable energy portfolio requirements;
- transmission capacity limitations;
- the eligibility and participation rate of rural electric cooperatives in the incentives for renewable energy;
- the Renewable Energy Bonding Act;
- the lack of a power purchase agreement for the Deming-area solar project;
- the use of Sandia National Laboratories technology by Advent Solar at its Mesa del Sol project;
- New Mexico State University's role in solar energy development;
- potential jobs that may be created by renewable energy developments;
- state office buildings' achievement of energy-efficient standards;

- bonding assessments for renewable energy projects; and
- a comparison of the water usage of evaporative cooling technology versus compressed air conditioning.

On a motion made, seconded and unanimously approved, the minutes of the July 18-19 meeting were approved as submitted.

Aquifer Mapping

Dr. Peter Scholle and Peggy Johnson, both of the Bureau of Geology and Mineral Resources (BGMR) at New Mexico Tech, provided the committee with an update on their ongoing aquifer mapping program. They explained that the BGMR has developed an aquifer mapping program and that funding from the 2005 legislature allowed them to begin some new aquifer mapping projects as well as to continue other ones. Dr. Scholle and Ms. Johnson also discussed some of the recent aquifer mapping and hydrogeologic studies they have conducted, including ones in the Roswell Artesian Basin, Arroyo Seco and Arroyo Hondo near Taos and in the Lower Pecos River Valley. They also provided the committee with various charts detailing the data they have compiled while working on mapping the aquifer in the Santa Fe area.

Questions and comments focused on:

- the governor's veto of the legislative appropriations two years in a row;
- interpretations of data collected by the bureau;
- measurement of aquifer recharge rates;
- the similarity of this work with work performed by the bureau for the oil and gas industry;
- historical records of water table monitoring; and
- access by private sector hydrologists to the bureau's data.

Climate Change

Dr. Greg Garfin of the University of Arizona provided the committee with some historical perspective on the prospect of climate change in the southwestern United States. He explained that tree ring and various other data indicate that the area suffered a drought as recently as the 1950s, but that much more severe droughts occurred in the 1790s and 1660s. Dr. Garfin also noted that the area suffered a long, severe "mega-drought" in the 1580s. He also noted that recent data points to rising temperatures in the southwest and pointed out that only a few degrees separate rain from snow as precipitation in many areas, which would lessen snow pack and likely intensify the effects of any drought conditions the area is experiencing, because snow pack is the major source of the region's moisture. Finally, Dr. Garfin pointed out that data shows that during prolonged droughts, wet years such as this one have often been followed by even drier ones.

Dr. Dave Gutzler of the University of New Mexico provided the committee with testimony regarding what can likely be expected in terms of climate change. He explained that rising temperature trends should continue, or even accelerate, and that droughts will continue to occur within the context of an increasingly warmer climate. Dr. Gutzler went on to note that several computer models have been run that show that as carbon dioxide levels in the atmosphere continue to increase, they eventually overwhelm the natural cooling mechanisms of the atmosphere. He also pointed out that as temperatures increase, evaporation will also

increase, which will rob the soil of moisture, as well causing as smaller amounts of snow pack to melt earlier and earlier in the spring. Finally, Dr. Gutzler indicated that warmer temperatures will lengthen the agricultural growing season in New Mexico, which will in turn increase the demand for water as plants consume more water over a longer period of time.

Anne Watkins of the Office of the State Engineer explained to the committee that the ramifications of the reports of Dr. Garfin and Dr. Gutzler place an even larger emphasis on water management, conservation and efficiency.

Questions and comments focused on:

- whether carbon dioxide models accounted for potentially increased photosynthesis rates and consequent balancing of the carbon dioxide in the atmosphere;
- the ability of oceans to absorb carbon dioxide;
- the differential between warming of land masses and oceans;
- new information indicating the Indian Ocean as a contributor to drought conditions in the southwest of North America;
- the reasons for above average temperature increases in New Mexico to be increasing twice as fast as the rest of the world;
- the potential length of prolonged drought;
- other potential causes of increased temperatures;
- changes in the historical record; and
- the massive die off in the four corners area.

Tuesday, August 22

Office of the State Engineer Enforcement Procedures

Greg Ridgely and Hillary Lamberton, of the Office of the State Engineer (OSE), provided the committee with a bill regarding enforcement of compliance orders issued by the OSE. Ms. Lamberton explained that a similar bill was introduced during the 2006 legislative session and that the OSE intends to introduce it again in the upcoming session. Ms. Lamberton went on to explain that the proposed bill would amend the statute that governs compliance orders and would allow for those parties who have received compliance orders from the OSE to request a formal hearing. However, she noted that if no such request is made, the compliance order would become final.

Questions and comments focused on:

- repayment of water over-diverted by parties receiving compliance orders;
- the reason for reorganization of order of subsections;
- enforcement authority over Native American irrigators (none);
- enforcement of permit conditions for acequias;
- the differences in measurement methods by the OSE and acequia associations;
- use of the statute against unadjudicated acequias;
- requirements for meter installations;
- how quickly the OSE can shut down illegal diversions;
- the effect on case law of statutory changes;
- suggestions for changes in Subsection B of the bill;
- the time it takes to resolve an enforcement action that may be appealed;
- effectiveness of compliance orders;
- the method the OSE uses to "serve" compliance orders;

- the method of informal resolution;
- the example of lower Rio Grande compliance orders;
- the issuance of compliance orders in Spanish;
- the fact that compliance orders place the burden on the over-user or water rights claimant; and
- the state Supreme Court's ad hoc committee on rules of civil procedure in water rights adjudications.

Arsenic Removal Technologies

Norbert Barcena, CEO of ARS Technologies, and Dr. Frank Way of New Mexico Tech provided the committee with a brief overview of a technology developed by ARS Technologies that removes arsenic from drinking water. They explained that there are currently a very limited number of available technologies that can perform such a function and that the one developed by ARS has been recently tested in a pilot project involving Bernalillo County. They went on to note that this technology requires no pretreatment of water, unlike other methods, and that less than one percent of water treated is lost. Also, Mr. Barcena noted that there are no harmful byproducts produced by this technology and that the systems are particularly easy to operate. Finally, he pointed out that while previous estimates of the cost of removing arsenic from household drinking water was rather high, ARS Technologies can reduce the cost to about \$10.00 per household per month.

Questions and comments focused on:

- whether this technology can remove other harmful elements;
- the scale of the system necessary to achieve economic viability;
- whether the cost of the technology depends upon contamination levels present;
- the final disposition of the arsenic that is removed from the treated water;
- the level of hazard posed by the treated arsenic;
- whether there is an economic value to retrieved arsenic;
- the treatment of water in the Las Cruces area contaminated by uranium;
- the government entity responsible for testing arsenic levels in drinking water;
- the cost of ARS Technologies' arsenic treatment units;
- the cost to the state;
- the amount of arsenic residue generated by treating water of a community of 500;
- the feasibility of ARS Technologies producing small, household arsenic removal systems;
- the adaptability of the system to rural water users' needs; and
- the feasibility of retrofitting the system to existing water treatment systems.

Eastern New Mexico Rural Water System Status

Scott Verhines, program manager for the Eastern New Mexico Water Authority, told the committee that the authority has received \$4 million so far from the legislature for the project. He showed a map of the region to be served by the project (essentially the communities between the Ute Reservoir and Portales) and explained the need for the project, which is a direct result of the mining of the Ogallala Aquifer. He expects completion of the preliminary engineering report in October of this year, after review by the Bureau of Reclamation. He reported that engineering analyses indicate that the only alternative to the pipeline project from the Ute Reservoir is the retirement of 78,000 acres of agricultural land and the close regulation of pumping and irrigation under an additional 350,000 acres. The current estimated costs of the project are \$436 million

and \$8 to 9 million a year for operations and maintenance of the project. The water rights are available from the Canadian River Compact, but if New Mexico does not use those water rights, they could be lost to Texas, he testified. He said that if the federal government assumes 65 to 75 percent of the cost burden of the project, the remaining cost to the users is affordable, about \$3.00 to \$3.50 per 1,000 gallons, which is comparable to several existing communities' rate base.

Questions and comments from the committee focused on:

- the effect of municipal and industrial water use on agriculture in the region;
- the effect on Ute Reservoir's water quality of the Ute Ranch Subdivision being built now;
- the appropriation request last year (\$50 million);
- the current status of the project;
- state funding options;
- the potential for wastewater reuse by industry and municipalities;
- the total estimated cost to the state over the build-out period (\$65 million) and to the local communities (\$43 million);
- the source of the local match;
- the "mapping out" and scheduling of the funding; and
- the comparison with development of the Salt Basin water resource.

Mr. Verhines told the committee that the New Mexico Society of Professional Engineers, the American Council of Engineering Consultants and the American Society of Civil Engineers New Mexico chapters have appointed committees to formulate ways to prioritize the major projects in the state and to develop an ideal schedule of funding these projects. That will be presented to the Water and Natural Resources Committee at its October meeting in Artesia.

The committee adjourned at 12:00 noon.

MINUTES
of the
FOURTH MEETING
of the
WATER AND NATURAL RESOURCES COMMITTEE
September 21-22, 2006
Elephant Butte

The fourth meeting of the Water and Natural Resources Committee was called to order by Representative Joe M Stell, chair, on Thursday, September 21, 2006, at 10:00 a.m. at the Elephant Butte Inn in Elephant Butte.

Present

Rep. Joe M Stell, Chair
Sen. Carlos R. Cisneros, Vice Chair
Rep. Ray Begaye
Rep. Joseph Cervantes
Sen. Mary Jane M. Garcia
Rep. Dona G. Irwin
Rep. Larry A. Larrañaga
Rep. Kathy A. McCoy
Rep. Andy Nunez
Sen. Mary Kay Papen
Rep. Mimi Stewart
Rep. Sandra L. Townsend
Rep. Don L. Tripp

Absent

Sen. Sue Wilson Beffort
Sen. Dede Feldman
Sen. Cynthia Nava
Sen. Steven P. Neville
Sen. H. Diane Snyder

Advisory Members

Sen. Rod Adair (September 22)
Sen. Vernon D. Asbill
Rep. Anna M. Crook
Rep. Candy Spence Ezzell
Sen. Clinton D. Harden, Jr.
Rep. Rhonda S. King (September 21)
Sen. Leonard Lee Rawson
Sen. Nancy Rodriguez (September 22)
Sen. Leonard Tsosie (September 22)
Rep. Peter Wirth

Rep. Richard P. Cheney
Sen. Timothy Z. Jennings
Sen. Gay G. Kernan
Rep. Ben Lujan
Rep. James Roger Madalena
Rep. Terry T. Marquardt
Rep. Danice Picraux
Sen. John C. Ryan
Rep. Henry Kiki Saavedra
Rep. Eric A. Youngberg

(Attendance dates are noted for those members not present for the entire meeting.)

Staff

Gordon Meeks
Jon Boller
Jeret Fleetwood

Guests

The guest list is in the meeting file.

Thursday, September 21

The committee began by introducing its members and staff.

Bob Barnes, mayor of Elephant Butte, welcomed the committee to the community of Elephant Butte and provided it with a brief overview of water and wastewater issues in the area. Mr. Barnes also thanked the committee for holding a meeting in Elephant Butte.

Lower Rio Grande Adjudication Update

Judge Jerald A. Valentine provided the committee with an update on the progress of adjudications of water users in the lower Rio Grande Basin. He explained that he had been appointed in 1995 as presiding judge over the adjudications, and he illustrated the difficulty involved in such a proceeding. Judge Valentine went on to provide the committee with budget requests for funds for the Administrative Office of the Courts (AOC), the Office of the State Engineer (OSE) and the Upton Transboundary Resource Center at the University of New Mexico (UNM) to be able to continue with the adjudications. He also provided the committee with an overview of the adjudication process and presented the committee with statistics detailing the progress of adjudications in the basin.

Questions and comments included:

- time limits for adjudications to be completed;
- methods of providing notice to water users of adjudication proceedings;
- the difference between subfiles in an adjudication and individual water rights;
- the rationale behind doctrine of prior appropriation;
- statutes governing surface and ground water rights;
- the necessity of hydrographic surveys to adjudications;
- methods used by other states to adjudicate their water rights; and
- problems with funding to be used by the OSE for adjudications.

Domestic Well Rules: Recent Compliance Orders

John D'Antonio, state engineer, began by providing the committee with an update on various issues concerning domestic wells. He explained that since the OSE had developed new rules regarding domestic wells, two lawsuits have been filed regarding those rules. One contends that the promulgation of the rules, particularly the public meetings concerning them, were not sufficient, and this lawsuit attacks other specific rules such as the allowance of some water rights transfers without notice and the transfer of domestic well rights into mutual domestic water users associations. The other lawsuit challenges the constitutionality of the statute that governs domestic wells. Mr. D'Antonio explained that the rules developed regarding domestic wells allow the OSE to focus on certain areas of the state that have compact delivery obligations and to manage water use there without having to declare the entire state a domestic well management area.

Next, Mr. D'Antonio discussed enforcement of an order issued by the OSE that requires metering of nondomestic wells in the lower Rio Grande Basin. He explained that the order was issued in March 2006, and that the OSE conducted a metering "blitz" recently that indicated that only 25 percent of the water users in the area are compliant with the order. However, Mr. D'Antonio explained that there is a mechanism in the order that allows for the installation of meters even after the issuance of the order. He emphasized that the OSE is trying to be lenient

with well users that are not in compliance with the order and discussed the OSE's plan for progressive enforcement of the order, noting that some wells may be "red-tagged", meaning that any further water use by that well will be illegal. Mr. D'Antonio also pointed out that red tags on wells can be contested at a hearing. He also indicated that some water users may simply choose to become compliant after the current growing season ends, and that some water users may qualify for low-interest loans for the purchase of well meters, which will likely be made available through soil and water conservation districts.

Finally, Mr. D'Antonio discussed water issues specific to the Truth or Consequences area. He explained that recent complaints contend that too much water has been appropriated out of the hot springs in the area and that decreasing spring flows will likely have a negative impact on tourism in the area. Mr. D'Antonio noted that while there has been an increase in the number of permit requests for hot mineral water bathing in the area, typically at households, the increased permits do not appear to have an effect on the flows of commercial operations. He also noted that some complaints have indicated that the temperature of the water coming out of the hot springs is decreasing. Mr. D'Antonio explained that the decreasing temperature is neither a water quantity issue, which is handled by the OSE, nor a water quality issue, which is the purview of the Department of Environment. He did point out that the community of Truth or Consequences has recently hired a hydrogeologist and stated that the OSE will help resolve the issues, if possible.

Questions and comments included:

- transfers of well water rights to mutual domestic water users associations;
- attachment of domestic water well rights to the property where the well is located;
- other areas of the state where the OSE will likely require well metering;
- transfers of water rights without notice;
- penalties for over diversion of metered water; and
- duplication of effort by water masters in the lower Rio Grande Basin and conservancy districts.

On a motion made, seconded and unanimously approved, the minutes of the August 21, 2006 meeting were approved as submitted.

Domestic Well Litigation

Steve Hernandez, an attorney with Hubert and Hernandez, P.A., provided the committee with an overview of the lawsuit that challenges the constitutionality of the statute governing the issuance of domestic well permits by the OSE. He explained that while domestic wells are not a problem in most of New Mexico, they are a huge problem in some areas of the state. He went on to note that the Mimbres River Basin is a fully adjudicated system, but that since the statute regarding domestic wells requires the OSE to issue permits for domestic wells, the likelihood exists that more wells will be drilled in the basin, which will impair users with senior water rights. Mr. Hernandez indicated that the impairment of senior water users' rights by continued approval of domestic wells is the basis of the lawsuit he has filed. He pointed out that if his case prevails and the statute is found unconstitutional, the OSE will be forced to make a decision regarding domestic wells. Mr. Hernandez emphasized that the purpose of the lawsuit is not to harm those that can get domestic wells, but to protect the water rights of senior users.

Questions and comments included:

- domestic well management areas allowing the OSE to deny domestic well permits;
- the number of domestic wells approved in the Mimbres River Basin since adjudication has been completed;
- the difference between fully adjudicated and fully appropriated basins; and
- how additional domestic wells might impair senior water rights.

Mutual Domestic Water Consumers Associations Water Rights

Mary Humphrey, an attorney with Humphrey and Ode, P.C., provided the committee with an update regarding a lawsuit filed in Rio Arriba County. Ms. Humphrey explained that the lawsuit challenges the promulgation of the OSE's regulations regarding domestic wells on a number of different fronts.

Questions and comments included:

- the need for clarity on the domestic well law;
- the transferability of well rights to mutual domestic water consumers associations;
- the state issuance of well permits to developers might constitute violation of the anti-donation clause;
- the potential effect on acequias of new domestic well rules; and
- the need for revision of subdivision laws.

Surface Owners Protection Act

Alisa Ogden, president-elect of the New Mexico Cattlegrowers Association, provided the committee with an update regarding development of the Surface Owners Protection Act. She explained that similar bills have been introduced in past legislative sessions, but that lack of an agreement among the parties involved caused the bills to fail each time. However, Ms. Ogden indicated that a number of different parties have worked together to develop a different version of the bill for introduction in the 2007 legislative session. She provided the committee with an overview of several of the key components of the bill and how those components differ from those in previous versions of the bill. For example, Ms. Ogden noted that the current version of the bill allows for compensation of the tenants of landowners for damage caused to property by oil and gas extraction. She noted that other differences include an extension in the time allowed for parties involved to negotiate an agreement, increase of the bond limit to \$25,000 and a statute of limitations on how long surface owners may be able to bring action against oil and gas operators for damages not compensated in the initial agreement.

Questions and comments included:

- public meetings addressing the changes to the bill;
- the likelihood of an agreement among the parties involved on the current version of the bill;
- problems that may arise from treating each surface owner equally;
- concerns of the real estate industry over the bill;
- notification of sale of mineral rights when land changes hands; and
- contamination of ground water by oil and gas drilling.

Friday, September 22

Eminent Domain

Janet Jarratt, a New Mexico landowner, provided the committee with testimony regarding the implications of the United States Supreme Court's decision in the *Kelo* case, which concerned eminent domain for economic development. She explained that the decision could have some impact on water rights in New Mexico because of their status as private property. Ms. Jarratt pointed out that municipalities could use the power of condemnation to commandeer the water rights of a private citizen and possibly even political subdivisions such as acequias.

Questions and comments included:

- why the Governor's Task Force on Eminent Domain is not addressing water issues;
- whether the bill passed by the legislature and vetoed by the governor during the 2006 session would have adequately addressed water issues;
- whether addressing eminent domain by amending the constitution or through statute would provide better protection to private landowners;
- whether condemnation of water rights is simply an inevitability; and
- potential for conflict between the Albuquerque-Bernalillo County Water Utility Authority and other political subdivisions in New Mexico.

Water System Governance

Anne Watkins of the OSE and Marilyn O'Leary of the Utton Transboundary Resource Center at UNM provided the committee with testimony regarding the work of a team put together to develop long-term sustainability for water and wastewater systems and to develop a water system business model. Ms. O'Leary also discussed the development of legislation to encourage voluntary regionalization of water districts. She explained that the legislation would also seek to maintain due process, provide for asset management training for board members and provide for fiscal oversight through the Department of Finance and Administration.

Frank Coppler of Coppler and Mannick, PC, noted that currently, there exists no simple means within statute for one entity to change itself into another kind as the population it serves grows. He went on to discuss the formation of water and sanitation districts in Eldorado and Anthony, New Mexico. Mr. Coppler explained that there are now 15 water and sanitation districts in New Mexico.

Questions and comments included:

- methods of encouraging communities to organize and regionalize their water systems;
- issues that still require resolution in the development of legislation;
- the possibility of building capital outlay contingencies into mechanisms for encouraging regionalization of water districts;
- 40-year water plans for mutual domestic water consumers associations; and
- inclusion of wastewater and solid waste issues in mutual domestic associations.

Gila River Issues

Dutch Salmon, chair of the Gila Conservation Commission, provided the committee with testimony regarding the Arizona Water Settlements Act. He provided the committee with a brief

overview of the Arizona Water Settlements Act, explaining that various components of the act provide for additional water rights for New Mexico, as well as \$66 million for water supply demands and an additional \$62 million for a water development project. Mr. Salmon went on to explain that he believes the current plan is flawed in that there are endangered species issues; a lack of demand for Gila River water; and economic hurdles to overcome in order to develop water rights along the Gila River. Instead, Mr. Salmon provided the committee with an alternative plan for using the funding from the settlement, the Four-County Endowment. He provided the committee with a brief overview of the Four-County Endowment, which he explained would divide the \$66 million provided for in the settlement between Grant, Luna, Hidalgo and Catron counties for various water projects. For example, Mr. Salmon noted that Grant County could spend its share on water rights acquisitions, Luna and Hidalgo counties could use funds to develop drip irrigation and Catron County could use its funds for watershed restoration.

Questions and comments included:

- whether the Four-County Endowment has been developed into a specific piece of legislation;
- whether funding the proposed drip irrigation projects in the endowment would violate the anti-donation clause;
- Silver City ground water resources;
- consideration of a report by Jennie Rice of ECONorthwest regarding costs of a Gila River diversion by the group charged with developing uses for the funds provided for in the settlement;
- average water flow in the Gila River; and
- the status of the Gila River as free flowing.

Salt Cedar Removal

Tim Carlson of the Tamarisk Coalition provided the committee with an update on various methods being used to control salt cedars along various rivers. He explained that while both Colorado and Texas have enjoyed a fair amount of success by employing biological controls, specifically a beetle that eats only salt cedars, such an approach would not work on the Rio Grande because of federal Endangered Species Act issues. However, Mr. Carlson noted that since the beetle is being used by Colorado on the San Juan River and by Texas on the Rio Grande, it will likely find its way into New Mexico anyway.

Mr. Carlson also provided the committee with visual examples of biological control of salt cedars along the Colorado River near Moab, Utah. He pointed out that the beetle takes over two years to kill the salt cedars along the river, and that the resulting dead trees will likely require some kind of mechanical removal.

Questions and comments included:

- the impact of the biological controls on bicycle trails and the tourism industry in Moab, Utah;
- whether the beetle eats other nonnative plant species;
- development of enzymes at Sandia National Laboratories to turn salt cedars into biofuel;

- hesitation from various federal agencies to implement some form of salt cedar control;
- successful use of biological salt cedar control by several Native American tribes;
- cost per acre to treat land for salt cedars;
- integrated pest management techniques to match the proper salt cedar control mechanism to various types of land;
- regrowth of salt cedars after control efforts;
- the necessity of viewing salt cedar control as a 10-year project;
- the willingness of Texas to invest in salt cedar control in New Mexico; and
- problems with using beetles in New Mexico that were successful in Colorado.

Water Rights Holders Issues

D. H. Velzy, president of the Conservation Coalition of Sierra County Well Owners, provided the committee with testimony regarding the order by the OSE that irrigation wells in the lower Rio Grande Basin be metered. He explained that the order constitutes an illegal unfunded mandate and provided the committee with several recommendations regarding well management and oversight of the OSE. Among Mr. Velzy's recommendations were the formation of an OSE oversight committee made up of legislators and well owners; completion of statewide hydrology studies by independent hydrologists before water management practices are implemented; and election, rather than appointment, of the state engineer.

Questions and comments included:

- documents that confirm water rights;
- issuance of water licenses to individuals without water rights;
- the difference between water licenses and water rights; and
- the transfer of water rights by the OSE without water licenses.

There being no further business, the committee adjourned at 1:40 p.m.

**MINUTES
of the
FIFTH MEETING
of the
WATER AND NATURAL RESOURCES COMMITTEE
October 12-13, 2006
Artesia**

The fifth meeting of the Water and Natural Resources Committee was called to order by Representative Joe M Stell, chair, on Thursday, October 12, 2006, at 10:05 a.m. at the Central Valley Electric Cooperative in Artesia.

Present

Rep. Joe M Stell, Chair
Sen. Carlos R. Cisneros, Vice Chair
Sen. Sue Wilson Beffort
Rep. Ray Begaye
Rep. Joseph Cervantes
Sen. Mary Jane M. Garcia (October 12)
Rep. Larry A. Larrañaga
Rep. Kathy A. McCoy
Rep. Andy Nunez
Sen. H. Diane Snyder
Rep. Sandra L. Townsend
Rep. Don L. Tripp (October 13)

Absent

Sen. Dede Feldman
Rep. Dona G. Irwin
Sen. Cynthia Nava
Sen. Steven P. Neville
Sen. Mary Kay Papen
Rep. Mimi Stewart

Advisory Members

Sen. Rod Adair (October 12)
Sen. Vernon D. Asbill
Rep. Anna M. Crook
Rep. Candy Spence Ezzell
Sen. Clinton D. Harden, Jr.
Sen. Timothy Z. Jennings
Sen. Gay G. Kernan
Rep. Ben Lujan
Sen. John C. Ryan
Rep. Henry Kiki Saavedra
Rep. Peter Wirth

Rep. Richard P. Cheney
Rep. Rhonda S. King
Rep. James Roger Madalena
Rep. Terry T. Marquardt
Rep. Danice Picraux
Sen. Leonard Lee Rawson
Sen. Nancy Rodriguez
Sen. Leonard Tsosie
Rep. Eric A. Youngberg

(Attendance dates are noted for those members not present for the entire meeting.)

Staff

Gordon Meeks
Jeret Fleetwood

Guests

Rep. W.C. "Dub" Williams
The guest list is in the original meeting file.

Thursday, October 12

The committee began by introducing members and staff.

Manuel Madrid, mayor of Artesia, welcomed the committee to Artesia. He thanked the committee for coming to Artesia and for the support the legislature has provided to the community.

Chuck Pinson of the Central Valley Electric Cooperative also welcomed the committee to Artesia and provided the committee with a brief overview of the cooperative's history and operations.

Elk Population Management in the Sacramento Mountains

R.L. Posey, a landowner from the Sacramento Mountains area, provided the committee with testimony regarding the growing elk population in that area. He explained that native elk were eradicated from the area around 1900, but that some elk were reintroduced into the area in 1967. Mr. Posey noted that since then, the elk population in the area has grown to about 2,400. He went on to illustrate some of the problems that such a large elk population causes for landowners, including damage to the land and the fences marking its boundaries, competition with cattle for grazing and potential financial losses because of less available food for cattle.

Leo Sims, chair of the State Game Commission, and R.J. Kirkpatrick, state game commissioner, provided the committee with a brief history of elk population management efforts in Game Management Unit 34, which includes the Sacramento Mountains. Mr. Sims explained that the recommended population in 2003 for Unit 34 was between 1,700 and 1,800 elk, but that another agreement on the size of the area's elk population is being developed. He went on to point out that a delicate balance exists among the various interests in the area, noting that while agricultural and ranching interests would prefer to see the elk population reduced, others benefit from revenue generated by visitors who come to the area specifically for elk hunting. Mr. Sims also indicated that the Department of Game and Fish is developing elk population target numbers statewide, and noted that new mandatory reporting requirements should help determine the current size of the elk population in the state. He went on to explain that the Department of Game and Fish has spent about \$750,000 on elk problems in Unit 34, and that although not everyone involved is happy with what has been done so far, all the parties involved are still working toward a solution.

Questions and comments by committee members included:

- increases in elk hunting permit numbers versus permits awarded to landowners;
- meaningful enforcement of laws regarding elk depredation;
- accuracy of elk population estimates due to rapid growth of the population;
- work with the Mescalero Apache Tribe on elk population control;
- enforcement of provisions allowing landowners to kill elk that are damaging their property; and
- compensation for landowners whose land is damaged by elk.

Water Rights Files of the Office of the State Engineer

Representative Ezzell and A.J. Olsen, an attorney with Henninghausen and Olsen, provided the committee with testimony regarding the removal of files from the Office of the State Engineer's (OSE's) office in Roswell. Representative Ezzell explained that water users in the area received word that the OSE planned to remove water rights files from its District 2 office in Roswell and take them to Santa Fe to be copied. She explained that the OSE is moving and copying the files in order to input them into the WATERS database. However, Representative Ezzell emphasized that many of the documents are simply too old and fragile to scan, and that the files often do not return to the district office in the same condition in which they left. She also noted that the files are the original records of water and well use in the area. Representative Ezzell went on to explain that the OSE had indicated that individuals who needed to view the files while they were being scanned could travel to Albuquerque to do so.

Mr. Olsen provided the committee with a brief history of the water files in the Roswell district office. He explained that the office has the information on most of the water use, both ground and surface, in the lower Pecos River Basin, and that the office serves seven counties in the area. Mr. Olsen went on to note that in 1953, the legislature enacted a statute mandating public access to water records. Then, in the 1990s, State Engineer Tom Turney began the WATERS database, which many believe is fundamentally flawed. Mr. Olsen emphasized the importance of the water records to the residents of seven New Mexico counties and questioned the OSE's decision to move the files rather than scan and copy them in Roswell. He noted that traveling to Albuquerque to view files is simply too long a trip for some residents who may need access to the files.

John Romero of the OSE provided the committee with a brief overview of the process the OSE is using to enter information into the WATERS database. He explained that moving files to the OSE office in Albuquerque is the normal process for getting file information into the database because the staff at that office have the necessary training and equipment to copy, enter and abstract the files. Mr. Romero pointed out that the Albuquerque office's staff have been using the imaging equipment used in this kind of process for six years. He also noted that some information is contained in files located in Santa Fe about water rights in the lower Pecos River Basin, and that the staff in Albuquerque match everything from both the Santa Fe and Roswell records before entering information into the database. Mr. Romero also indicated that six out of seven basins in New Mexico have been entered into the database and that, typically, the files used to enter the information are archived; however, they can be faxed or mailed overnight to the Roswell district office if someone needs to view the files.

Questions and comments from committee members included:

- the physical size of the files involved;
- insurance for the OSE district office in Roswell;
- the value of keeping the files in Roswell;
- problems with lost water files out of the Aztec district office; and
- lease information for the Roswell district office.

Engineering Community's Prioritization of Water Projects

Brian Burnett of the American Council of Engineering Companies and Scott Verhines, president of the New Mexico Society of Professional Engineers, presented the committee with an overview of the engineering community's concerns regarding the planned "year of water" in the legislature. They explained that a number of engineering groups, including the American Council of Engineering Companies (New Mexico), the American Society of Civil Engineers (New Mexico) and the New Mexico Society of Professional Engineers, have come together to provide input to the legislature regarding water projects and various other water issues.

First, Mr. Verhines discussed the Water Trust Fund and the Water Trust Board. He explained that the trust fund and the board were originally designed to create and manage a water trust fund with enough resources to leverage funds and implement large-scale regional water projects, but that they have since become another ineffective capital outlay program. Mr. Verhines provided the committee with suggestions from the engineering community for improving the operation and mission of the fund and the board, such as appointing a technically inclined board with a focused mission and making a significant and protected investment in the Water Trust Fund.

Next, Mr. Verhines discussed ways to improve the capital outlay process with regard to water and wastewater projects. He noted that the present capital outlay system is not cost-effective and, therefore, increases project costs and delays. He suggested several ways of improving the system, such as forming an independent committee to assess, rate and prioritize projects; developing a uniform application process; including infrastructure planning and assessment in the process; and providing oversight to ensure ongoing and appropriate asset management.

Finally, Mr. Verhines discussed Native American water rights settlements. He explained that while the federal government is primarily responsible for such settlements, the state bears some financial responsibility, and completing the settlements would greatly advance the certainty of long-term water supplies. Mr. Verhines suggested that \$35 million to \$75 million be placed in the Indian Water Rights Settlement Fund to represent a good-faith effort by New Mexico and to signal to congressional leaders that New Mexico is serious about completing the settlements.

Questions and comments from the committee included:

- how suggestions are the result of ongoing discussions within the engineering community;
- investment from the private sector in water projects;
- the OSE as the center of water infrastructure in New Mexico;
- the possible creation of a State Office of Water Infrastructure;
- the veto of a 2006 appropriation for the Indian Water Rights Settlement Fund;
- the Innovative Technologies Fund; and
- desalination plants.

Subdivision Approval Contingent on Water Rights

Lauren Ketcham of Environment New Mexico provided the committee with a proposal regarding a 100-year water supply planning horizon. She explained that such a measure would require all new residential, commercial and industrial developments to have a 100-year water supply before they are approved. Ms. Ketcham pointed out that while New Mexico will continue to grow, such a measure would allow it to grow in a more disciplined manner. She also indicated that while a bill detailing her proposal has not yet been drafted, a number of constituents, from environmental groups to homebuilders, are working to develop a proposal. Ms. Ketcham emphasized that long-term planning is the goal of such legislation.

Questions and comments from the committee included:

- the inclusion of watersheds and salt cedar control in any long-term water plan;
- domestic wells as part of the water planning process;
- 100-year water plans for utilities;
- similar programs in other states; and
- reuse of water in some areas without a water surplus as a means of establishing a water supply.

On a motion made, seconded and unanimously approved, the minutes of the September 21, 2006 meeting were approved as submitted.

Friday, October 13

Soil and Water Conservation Districts

Debbie Hughes, executive director of the New Mexico Association of Conservation Districts, provided the committee with an overview of the basic duties and powers of conservation districts. She explained that the districts basically work to maintain water supply, and that while they are political subdivisions of the state, they also administer other programs funded with federal money. Ms. Hughes also noted that conservation districts are able to provide aid that state government cannot, such as distributing state dollars to private landowners, provided that the money benefits taxpayers.

Ms. Hughes also pointed out that conservation districts also set mill levies, but that the funding generated by such levies is not necessarily adequate to meet the needs of most districts, particularly when they sunset after 10 years. Ms. Hughes indicated that the Association of Conservation Districts would like to have the 10-year mill levy sunset removed from statute during the upcoming legislative session.

Finally, Ms. Hughes discussed some of the programs administered by conservation districts that leverage federal funds. She explained that while many of the programs use federal money, they do not include federal employees. Ms. Hughes went on to discuss salt cedar removal programs in New Mexico, noting that those trees treated with herbicide must be left alone for two to three years for the herbicide to effectively kill the trees.

Eddie Vigil, also of the New Mexico Association of Conservation Districts, pointed out that all 47 conservation districts in New Mexico are governed by locally elected members. He also emphasized that serving on the board of a conservation district is a purely voluntary activity.

Questions and comments from the committee included:

- incentives for landowners to conserve water, such as drip irrigation;
- salt cedar control on the San Juan River;
- the boundary between the upper and lower Rio Grande; and
- how the work done by conservation districts across state lines allows leveraging of more federal money.

National Pollution Discharge Elimination System (NPDES) Primacy

Marcy Leavitt, chief of the Surface Water Quality Bureau of the New Mexico Department of Environment (NMED), and Tracy Hughes, general counsel for NMED, provided the committee with an overview of the NPDES program, explaining that currently, the federal Environmental Protection Agency is charged with the task of issuing permits for the program in New Mexico. Ms. Leavitt pointed out that New Mexico is one of only four states that does not have its own NPDES program in place. However, she went on to indicate that the NMED would not be seeking primacy over the NPDES program during the 2007 legislative session. Ms. Leavitt did note that the NMED would continue to work with stakeholders in the process of developing language for a bill to provide the NMED with primacy over the NPDES program.

Questions and comments from the committee included:

- the definition of "surface waters" of the state;
- litigation over Clean Water Act definitions;
- regulation of chemical waste dumping in arroyos;
- air quality complaints from residents of the Four Corners area;
- potential federal funding for assuming NPDES primacy;
- whether Native American tribes can also assume primacy; and
- monitoring of dairies in New Mexico by the NMED.

Regulatory Reform

Sayuri Yamada of the Association of Commerce and Industry (ACI) provided the committee with testimony regarding regulatory justice. She explained that New Mexico's regulatory system is composed of roughly 36 executive departments and independent agencies, 208 boards and commissions and thousands of rules and regulations within the New Mexico Administrative Code, with the number and complexity of those rules and regulations growing each year. Ms. Yamada went on to note that ACI has traveled to over 20 cities in New Mexico and heard from over 1,000 citizens, and a common complaint is that the rules and regulations are simply too complicated for both the public and business community to be able to navigate. She also pointed out that because the State Administrative Procedures Act does not apply to most agencies, few uniform regulatory controls apply to all state agencies, leaving those agencies to establish their own administrative procedures without regard to consistency.

Ms. Yamada went on to explain that in early 2006, a group of businesses, industry groups, trade associations and other interested parties began meeting to develop potential solutions to the problems identified within New Mexico's regulatory system. She explained that the regulatory justice effort is based on the principle that government should create a regulatory system that is simple and clear, enhances confidence, promotes accountability and ensures consistency in administrative proceedings.

T.J. Trujillo, an attorney with Gallagher and Kennedy, explained to the committee that the regulatory justice effort has identified a number of regulatory obstacles and problems that will likely be addressed by about 10 bills to be introduced during the 2007 legislative session. He noted that these bills are still in the process of being refined and have not yet been drafted. However, Mr. Trujillo did provide the committee with a list of potential bills.

Questions and comments from the committee included:

- development of a legislative interim committee with the power to suspend rules and regulations to prevent agencies from passing regulations that should be the purview of the legislature;
- efforts in the 1980s to examine the Administrative Procedures Act; and
- methods other states use for rules and regulations.

Water Rights Transfers from Artesian Conservancy Districts

Brent Bullock of the Pecos Valley Artesian Conservancy District provided the committee with testimony regarding water rights transfers out of artesian conservancy districts. He provided the committee with copies of a bill introduced during the 2006 legislative session that would have required the state engineer to deny applications for water rights transfers out of artesian conservancy districts if the transfer had not been approved by the board of directors for the conservancy district. He explained that the budgets for conservancy districts are based upon the district's tax authority, and that water rights transfers to points of diversion outside of a district reduce the property values within the district and, therefore, lower the taxes that the conservancy district is able to collect.

Questions and comments from the committee included:

- whether conservancy districts can stop the sale or transfer of water rights through this legislation;
- court remedies for water rights transfer applicants;
- how the concept is similar to protections in place for acequias;
- the difference between water rights and water ownership; and
- other political subdivisions with the ability to reject water rights transfers.

There being no further business, the committee adjourned at 12:00 noon.

MINUTES
of the
SIXTH MEETING
of the
WATER AND NATURAL RESOURCES COMMITTEE
November 29-30, 2006
Santa Fe

The sixth meeting of the Water and Natural Resources Committee was called to order by Representative Joe M Stell, chair, on Wednesday, November 29, 2006, at 9:10 a.m. in Room 307 of the State Capitol in Santa Fe.

Present

Rep. Joe M Stell, Chair
Sen. Carlos R. Cisneros, Vice Chair
Sen. Sue Wilson Beffort
Rep. Ray Begaye
Rep. Joseph Cervantes
Sen. Mary Jane M. Garcia
Rep. Dona G. Irwin
Rep. Larry A. Larrañaga (November 29)
Rep. Kathy A. McCoy
Sen. Cynthia Nava (November 30)
Sen. Steven P. Neville
Rep. Andy Nunez
Sen. Mary Kay Papen
Sen. H. Diane Snyder (November 29)
Rep. Mimi Stewart
Rep. Sandra L. Townsend

Absent

Sen. Dede Feldman
Rep. Don L. Tripp

Advisory Members

Sen. Vernon D. Asbill (November 29)
Rep. Anna M. Crook
Rep. Candy Spence Ezzell
Sen. Clinton D. Harden, Jr.
Sen. Timothy Z. Jennings
Rep. Rhonda S. King
Rep. Ben Lujan (November 29)
Sen. Nancy Rodriguez
Sen. John C. Ryan
Rep. Peter Wirth

Sen. Rod Adair
Rep. Richard P. Cheney
Sen. Gay G. Kernan
Rep. James Roger Madalena
Rep. Terry T. Marquardt
Rep. Danice Picraux
Sen. Leonard Lee Rawson
Rep. Henry Kiki Saavedra
Sen. Leonard Tsosie
Rep. Eric A. Youngberg

(Attendance dates are noted for those members not present for the entire meeting.)

Staff

Gordon Meeks

Jon Boller (November 30)

Jeret Fleetwood

Guests

The guest list is in the original meeting file.

Wednesday, November 29**Surface Owners' Protection**

Bob Gallagher of the New Mexico Oil and Gas Association provided the committee with testimony regarding the status of the oil and gas industry's support for a proposed Surface Owners' Protection Act. The act provides remedies and protection to those landowners who have leased the subsurface oil and gas rights on their property. He noted that during the 2006 session, a version of the act passed through the house, but became held up in the Senate Judiciary Committee and never made it to the senate floor for a vote. Mr. Gallagher went on to state that the oil and gas industry fully supports the amended version of the 2006 bill and provided the committee with an overview of the act. He explained that the keys to the Surface Owners' Protection Act can be summed up in four words: communication, cooperation, compensation and confidence.

Mr. Gallagher indicated that the communication and cooperation components of the act involve providing notice to landowners of a company's intention to extract resources on a piece of land, and working with landowners on a plan for removal of those resources, neither of which is currently required. He went on to explain that the compensation component requires a company extracting oil and gas to compensate landowners for any damages that occur as a direct result of oil and gas extraction activities. Mr. Gallagher pointed out that the law currently makes no such requirement. He noted that the confidence aspect of the act involves surety or bond posting by the oil and gas operators, and the company moving forward with mining if no agreement between them and the landowner can be reached.

Mr. Gallagher emphasized that the Surface Owners' Protection Act is not a compromise bill between competing interests, as the oil and gas industry is actually making all the concessions, but rather the industry's attempt to be a good neighbor. He also pointed out that his testimony was not a request for the committee's endorsement of a bill for the 2007 session, as there are still negotiations underway between the oil and gas industry and various environmental groups. He noted that a bill would be introduced in the 2007 session regardless of a committee endorsement.

Doug Meiklejohn of the New Mexico Environmental Law Center echoed Mr. Gallagher's comments regarding a committee endorsement for a 2007 bill, explaining that negotiations are still ongoing and it would simply be too early for the committee to endorse something.

Questions and comments included:

- directional drilling for oil and gas to avoid the problem of placing a drilling pad in the middle of agricultural fields;
- drawbacks of directional drilling;
- adequate remediation of land where oil and gas activity has taken place;
- the effect of financial surety provision of the bill on smaller oil and gas operators;
- oil and gas companies crossing over several different landowner's properties to extract resources, and remedies for all affected landowners;
- other consequences of oil and gas activity, such as poachers and trespassers using roads built for oil and gas activity;
- legal issues contained in the 2006 bill;
- the importance of implementing *some* protections for landowners; and
- whether the bill being discussed is supported by all landowners and cattlegrowers, or just some.

Gila River Settlement

Craig Roepke of the Office of the State Engineer (OSE) provided the committee with an update regarding the Gila River Settlement. He began by reviewing the settlement's planning process, pointing out the technical subcommittees, science forums, studies and various other forms of input gathered by the Gila-San Francisco Coordinating Committee. Mr. Roepke went on to note that the Gila-San Francisco Coordinating Committee will take the input from those sources and develop options for the Interstate Stream Commission to consider when making recommendations on use of the water and federal funds awarded to New Mexico through the settlement. Mr. Roepke also emphasized that the planning process in place must be carefully followed and kept on schedule if a determination is to be made on how best to make use of the settlement by 2012. He noted that the Gila River Settlement Act has statutory deadlines built into it.

Peter Wilkinson of the Interstate Stream Commission provided the committee with an update on the Gila River Science Forum, which had recently been held. He explained that the forum featured a number of scientists well-versed in river and watershed management whose input would help inform decision-making in the Upper Gila Watershed. Mr. Wilkinson discussed the goals of the forum and then provided the committee with summaries of recommendations of several scientists who presented at the forum. He then provided the committee with the forum's recommendations on the overall process, which included identifying ecological, cultural and economic assets; developing a framework for integrating scientific information; ensuring continued stakeholder involvement; and considering future conditions of both the river and population in the area.

Mr. Roepke then provided the committee with the financial aspects of the settlement process. He listed the year-by-year costs of the settlement process, noting that while the total cost of studying options for use of the settlement is \$4.6 million, the costs are spread out over the years between 2006 and 2013.

Questions and comments included:

- use of the 14,000 acre-feet of water provided for in the settlement for economic development in southwestern New Mexico;
- the effect of modification of the Colorado River Compact and San Juan/Chama water for New Mexico;
- the possibility of using Gila River water for Las Cruces via a pipeline;
- how helpful 14,000 additional acre-feet of water is to New Mexico's overall water budget;
- federal legislation worded in such a way that requires extensive study of all available options, including doing nothing;
- whether anything prohibits building a dam or retractable dam in the area;
- whether there have been public hearings on pumping Gila River water elsewhere; and
- possible committee endorsement of a bill for the \$1.8 million required to move studies forward in 2007.

Salt Basin/ Sacramento Mountain Hydrologic Study

Mr. Roepke also provided the committee with an update regarding a hydrologic study in the Salt Basin. He explained that while the potential availability of water in the Salt Basin aquifer is important, the geology of the area makes removal of water resources difficult without further study. Mr. Roepke also noted that one of the factors making study of the aquifer difficult is that the area's extremely complex geology makes it impossible to remove a sample from one area and be able to extrapolate about resources elsewhere in the aquifer. He stated that three areas will require further investigation:

- ground water recharge entering and natural discharge leaving the area's hydrogeologic systems;
- distributions and movements of ground water within the Salt Basin; and
- the volume and quality of ground water in the Salt Basin.

Mr. Roepke went on to indicate that the plan is to conduct a three-year study of the Salt Basin aquifer and noted that the total cost of the study would be about \$2.5 million.

Linda Weiss, director of the United States Geological Survey (USGS) Water Science Center, presented the committee with a report on the USGS's knowledge and understanding of the hydrogeology of the Salt Basin. She explained that the Salt Basin covers about 2,400 square miles and extends from south-central New Mexico into Texas, and that recoverable ground water resources could be between 15 million and 57 million acre-feet. She echoed Mr. Roepke's comments about the complexity of the geology in the area. Ms. Weiss went on to indicate that the USGS is interested in collaborating with New Mexico on a study of the water resources in the Salt Basin.

Questions and comments included:

- coordination between a hydrologic study of the Sacramento Mountains and the proposed study of the Salt Basin;
- the interpretation of USGS data; and

- the size of the aquifer in the Salt Basin.

Senator Asbill presented the committee with a letter regarding elk population issues in the Sacramento Mountains. He requested that the committee endorse the letter requesting interested parties to meet in Santa Fe on January 18 to discuss the issue.

What New Mexico Can Do to Respond to Global Climate Change

John Hernandez, a consultant and former engineer at New Mexico State University, provided the committee with recommendations regarding ways New Mexico can address issues related to global climate change. He pointed out that while the recommendations primarily address climate change, implementation of them should save New Mexico money in the long run. Mr. Hernandez's recommendations included creating the position of state surface water hydrologist; professional exams for certain engineers and geologists; distribution of surface hydrologic data by the OSE via the internet; additional funding for the New Mexico Water Resources Research Institute for analysis of surface water hydrology; and establishment of a subcommittee on climate change.

Questions and comments included:

- whether New Mexico needs more hydrologists;
- potential funding sources for Mr. Hernandez's recommendations; and
- the likely cost of implementing the recommendations.

Gallup/Navajo Project Status

John Leeper, manager of the Navajo Nation's Water Management Office, provided the committee with an overview of the Gallup Project and the Navajo Water Settlement. He explained that the settlement is important to New Mexico in part because it helps protect New Mexico's San Juan/Chama water. Mr. Leeper also pointed out that the settlement is preferable to a long, difficult court battle over water resources in the area. He went on to note that the Gallup project is a regional one, consisting of the Kirtland Treatment Plant, the Gallup regional system and a ground water system.

Lance Allgood, utilities director for the City of Gallup, explained that the project is actually the hub of a much larger water system, with water service planned for the outlying Navajo Nation chapters. He indicated that construction on the project is scheduled to begin in six months.

Marc Edwards, a consultant for the City of Gallup, Mr. Leeper and Mr. Allgood extended an invitation to the committee to tour the project whenever the members wished to do so.

Questions and comments included:

- legislative proposals connected to the project;
- the status of Arizona's water settlements relative to the project;
- potential areas for legislative meetings and project tours;
- points of diversion for the project; and
- issues raised by Senator Domenici regarding the project's cost.

On a motion made, seconded and unanimously approved, the committee approved the minutes of the October 12, 2006 meeting.

Governor's Task Force on Eminent Domain

J.D. Bullington, co-chair of the Governor's Task Force on Eminent Domain, presented the committee with a report from the task force. He began by noting that while the legislature had passed a bill addressing eminent domain issues during the 2006 session, the governor vetoed the bill amid concerns that it might not withstand a court challenge and instead established a task force to study the issue and make recommendations. Mr. Bullington went on to explain that most of the recent attention paid to the issue of eminent domain stems from the United States Supreme Court case *Kelo v. the City of New London*, which upheld the use of eminent domain for certain economic development purposes and, many critics feel, weakened private property rights.

First, Mr. Bullington reviewed the *Kelo* case for the committee and explained that Governor Richardson instructed the task force to study whether legal protections are needed in New Mexico to limit or prohibit the use of eminent domain for economic development. He also discussed the membership of and methodology used by the task force.

Next, Mr. Bullington provided the committee with a review of existing laws in New Mexico regarding eminent domain, particularly the Metropolitan Redevelopment Act. He explained how the act authorizes the use of eminent domain in certain cases, pointing out that Rio Rancho is apparently the only government entity to have used the power of eminent domain as permitted in the act.

Mr. Bullington then provided the committee with a list of the task force's recommendations. He noted that one recommendation, repeal of both the Urban Renewal Law and the Community Development Law, was unanimously endorsed by the task force. Mr. Bullington went on to discuss the recommendations endorsed by a majority of the task force's members: removal of eminent domain authority from the Metropolitan Redevelopment Act and additional procedural protections for property owners in the same act.

Finally, Mr. Bullington discussed the recommendation made by a minority of voters regarding removal of eminent domain authority from the Metropolitan Redevelopment Act. He explained that the task force endorsed the recommendation by a 10-7 vote and discussed the minority's position that those procedural protections recommended by the task force and already outlined in the Metropolitan Redevelopment Act form enough of a framework for local governments to follow.

Questions and comments included:

- whether the task force discussed water rights along with property rights;
- blighted areas and economic development;
- continued use of eminent domain through public nuisance laws;
- simpler methods of protecting private property provided by the vetoed 2006 bill; and

- pipeline and electric utility rights of way.

Thursday, November 30

Office of the State Engineer/Interstate Stream Commission Issues

"Year of Water" Proposals

John D'Antonio, state engineer, began by providing the committee with a list of policy priorities for Governor Richardson's "Year of Water". He explained that a number of proposals have been developed for the Year of Water, and he provided the committee with a brief description of each proposal and its anticipated cost. Those proposals included:

- establishing the Office of Water Infrastructure Development;
- technical assistance on acequia governance;
- an additional appropriation to the Water Trust Fund;
- a statewide leak detection and system repair program;
- water innovation and demonstration projects;
- a project to provide safe and clean water to the eastern Navajo Reservation;
- additional capital outlay for the Ute Pipeline Project;
- continued study of the Salt Basin aquifer;
- Indian water rights settlements;
- capital outlay for the strategic water reserve; and
- river ecosystem restoration.

Questions and comments included:

- funding for water rights adjudications;
- protections for agricultural land use;
- lack of measures in the proposals for conservation of agricultural water;
- conservation easements;
- potential cost of adjudications; and
- proposed budget for the OSE.

Diversion Deliveries and Consumptive Transfers

Mr. D'Antonio and John Longworth of the OSE provided the committee with an overview of the general elements of a water right. Mr. Longworth went on to discuss such considerations as diversion and beneficial use. He explained that a certain amount of water is required to convey water from a point of diversion to a place of use, as well as the measure and limit of the right to use water in New Mexico. Mr. Longworth went on to explain that when adjudicating a water right, both the measure and limit of a water right, or the consumptive irrigation requirement (CIR), and the water necessary to convey the CIR must be considered.

Pecos River Compact Deliveries

Estevan Lopez, interstate stream commissioner, provided the committee with an overview of how much water New Mexico has delivered to Texas over the past 50 years relative to its compact obligations. He explained that New Mexico was required to pay Texas \$14 million for failure to comply with compact delivery requirements in 1985, which ended a long

period of steadily increasing underdeliveries. Mr. Lopez went on to note that New Mexico has since steadily built up a credit of water deliveries but pointed out that the credit is relatively small and could be wiped out with one or two years of underdelivery. He went on to discuss implementation of the Pecos River Settlement, which includes land and water rights acquisitions, water leases and augmentation wells and the projected cost of implementation. Mr. Lopez noted that the total cost of implementation of the Pecos River Settlement would be about \$66.5 million and outlined various funding sources.

Rio Grande Compact Deliveries

Mr. Lopez went on to discuss compact delivery issues on the Rio Grande. He provided the committee with an illustration of New Mexico's compact deliveries to Texas relative to its obligations. Mr. Lopez also discussed various means New Mexico uses to ensure that compact delivery obligations are met, such as continued work on a pilot channel near Elephant Butte and clearing of sediment in the river channel to improve flow.

Mr. Lopez also discussed the threat of litigation between New Mexico and Texas over the lower Rio Grande. He reminded the committee that the Texas legislature had appropriated money to begin preparing to sue New Mexico over water issues, focusing on two areas: excessive salination of the lower Rio Grande's water and unregulated ground water pumping. Mr. Lopez also noted that about \$5 million had been appropriated by the New Mexico legislature in 2002 to prevent and prepare for such litigation. He indicated that since then, the OSE, Interstate Stream Commission, Department of Environment (NMED) and the Attorney General's Office have made a great deal of progress in forestalling threatened litigation, developing the technical tools needed for better water administration on the lower Rio Grande, acquiring physical data needed for assessing hydrological conditions and protecting New Mexico's water supplies. Mr. Lopez also discussed progress made on addressing the two focal points of Texas' threatened lawsuit.

Questions and comments included:

- uses for money appropriated for New Mexico's legal defense.

Legislative Proposals

The committee endorsed the following legislative proposals:

- enforcement of OSE's compliance orders;
- extend 40-year planning period;
- \$60 million for the Water Trust Fund (appropriation);
- salt cedar treatments (appropriation);
- silvery minnow recovery (appropriation);
- New Mexico State University chile industry research (appropriation);
- Natural Resources Trustee Act amendments and appropriation;
- mercury task force (appropriation);
- NMED Illegal Dumping Task Force (appropriation) and a memorial to support the creation of a coalition to combat illegal dumping;
- Utton Transboundary Resources Center water rights ombudsman (appropriation);
- acequia governance education, training and technical assistance (appropriation);

- statewide aquifer mapping project (appropriation);
- Santa Cruz Reservoir silt removal project (capital appropriation);
- a meeting on the elk depredation issue;
- a memorial opposing water rights files removal from the Roswell office;
- Gila River Settlement planning; and
- the Forestry and Watershed Restoration Institute at New Mexico Highlands University (appropriation).

Middle Rio Grande Conservancy District Functions

Chuck DuMars, an attorney for the Middle Rio Grande Conservancy District (MRGCD), provided the committee with testimony regarding MRGCD's makeup, governance, functions and current projects. He began by providing the committee with a brief history of the conservancy district, noting that while it became a political entity 80 years ago, much of the irrigation system that makes up the district has been in use for close to 400 years. Mr. DuMars went on to outline the conservancy district's operation in terms of diversions and return flows, pointing out that MRGCD diverts about 275,000 acre-feet of water annually and returns about 52,000 acre-feet to the river. He also discussed the physical and operational improvements the district has undergone in an attempt to increase irrigation efficiency. Finally, Mr. DuMars covered the MRGCD's involvement in the Middle Rio Grande Endangered Species Act Collaborative Program, a partnership created to protect listed endangered species in the area, particularly the Rio Grande silvery minnow. He explained that a number of program activities are underway, including captive breeding of the minnow for release into the river, supplemental water releases to meet federal flow targets, irrigation and management improvements and scientific research.

Questions and comments included:

- the length of irrigation ditches in the conservancy district;
- aerial photographs of daily water use;
- total acreage of agricultural land within the district;
- disposition of "saved" water acquired through improved management and physical structures; and
- adjudication of water rights in the conservancy district.

A number of members of the conservancy district came forward to voice their concerns about its management. They provided the committee with a list of complaints regarding district functions, including unresponsiveness by the MRGCD Board, water delivery problems, noxious weed problems, members who sell their water rights and continue to lease them, ditch maintenance problems and a lack of cooperation between irrigators in the district and the board.

State Engineer D'Antonio explained to the committee that the OSE is aware of some of the problems listed and indicated that his office is working to address them. He also pointed out that many of those problems are with MRGCD's management and not necessarily the OSE.

Members of the committee thanked the chair for his leadership.

There being no further business, the committee adjourned at 5:20 p.m.

ENDORSED LEGISLATION

underscored material = new
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HOUSE BILL

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

FOR THE WATER AND NATURAL RESOURCES COMMITTEE

AN ACT

RELATING TO WATER; PROVIDING FOR STATE ENGINEER ENFORCEMENT OF
COMPLIANCE ORDERS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 72-2-18 NMSA 1978 (being Laws 2001,
Chapter 143, Section 1) is amended to read:

"72-2-18. STATE ENGINEER--ENFORCEMENT--COMPLIANCE
ORDERS--PENALTY.--

A. When a person, pursuant to a finding of fact,
violates a requirement or prohibition of Chapter 72 NMSA 1978,
a ~~[rule]~~ directive adopted by the state engineer pursuant to
~~[those laws]~~ Section 72-2-8 NMSA 1978, a condition of a permit
or license issued by the state engineer pursuant to ~~[those~~
~~laws]~~ law or an order entered by a court adjudicating a water
right, the state engineer may, in addition to any other

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1 remedies available under law, issue a compliance order stating
2 with reasonable specificity the nature of the violation and
3 requiring compliance within a specified time period.

4 B. This section shall not be construed to affect or
5 interfere with the jurisdiction of ~~[an irrigation district]~~ a
6 federal court or an Indian nation, tribe or pueblo to enforce
7 its orders and decrees pertaining to water rights.

8 C. A compliance order may include an order to cease
9 the violation of a ~~[permit or license or portion of a permit or~~
10 ~~license issued by the state engineer. A compliance order~~
11 ~~issued for overddiversion or illegal diversion of water may~~
12 ~~require repayment of water in an amount up to double the amount~~
13 ~~of the overddiversion or illegal diversion and installation of a~~
14 ~~measuring device prior to any future diversion of water. In~~
15 ~~determining the amount of repayment of water, the state~~
16 ~~engineer shall take into account the seriousness of the~~
17 ~~violation, any good faith efforts to comply with the applicable~~
18 ~~requirements and other relevant factors]~~ requirement or
19 prohibition of Chapter 72 NMSA 1978, a directive issued in
20 accordance with the provisions of Section 72-2-8 NMSA 1978, a
21 condition of a permit or license issued by the state engineer
22 or an order entered by a court adjudicating a water right.

23 D. The state engineer shall provide an opportunity
24 for the person named in the compliance order ~~[an opportunity to~~
25 ~~contest informally the alleged violation with the office of the~~

1 ~~state engineer and a public hearing pursuant to Sections~~
2 ~~72-2-16 and 72-2-17 NMSA 1978. If the person wants a public~~
3 ~~hearing, he shall submit a written request no later than thirty~~
4 ~~days after issuance of a compliance order by certified mail,~~
5 ~~return receipt requested, or serve a notice of appeal upon the~~
6 ~~state engineer, in accordance with Section 72-7-1 NMSA 1978,~~
7 ~~within thirty days after receipt of a compliance order. A~~
8 ~~compliance order is final upon action by the state engineer~~
9 ~~within thirty days after a public hearing or within thirty days~~
10 ~~of an appeal pursuant to Section 72-7-1 NMSA 1978.~~

11 ~~E. The state engineer shall not seek enforcement of~~
12 ~~a compliance order until it is final]~~ to have a hearing on the
13 alleged violation pursuant to Section 72-2-16 NMSA 1978. A
14 hearing shall be held if a written request is made to the state
15 engineer within thirty days after receipt of the notice of the
16 compliance order sent by certified mail. A compliance order
17 issued pursuant to this section shall become final unless the
18 person named in the order submits a written request for a
19 hearing to the state engineer within thirty days of receipt of
20 the order. Nothing in this section shall prohibit the person
21 named in the order from pursuing an informal resolution of the
22 matter after a timely request for hearing has been made.

23 E. A compliance order may require repayment of
24 water that was overdiverted or illegally diverted. Repayment
25 of water may be up to double the amount of the overdiversion or

1 illegal diversion. In determining the repayment of water
2 beyond the amount overdiverted or illegally diverted, the state
3 engineer shall take into consideration the seriousness of the
4 violation, any good faith efforts to comply with the applicable
5 requirements and any other relevant factors. Installation of a
6 measuring device may be required prior to any future diversion
7 of water.

8 F. Any appeal to district court shall be conducted
9 pursuant to ~~[Chapter 72, Article 7]~~ Sections 72-2-16 and 72-7-1
10 NMSA 1978.

11 ~~[F.]~~ G. The state engineer may assess a civil
12 penalty of up to one hundred dollars (\$100) per day for
13 violation of a ~~[final]~~ compliance order.

14 ~~[G.]~~ H. If a ~~[final compliance order is issued and~~
15 ~~the]~~ person does not comply with a compliance order, the state
16 engineer may file a civil action to enforce the compliance
17 order and receive any of the remedies provided in this section,
18 including injunctive relief."

19 Section 2. EFFECTIVE DATE.--The effective date of the
20 provisions of this act is June 15, 2007.

underscored material = new
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HOUSE BILL

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

FOR THE WATER AND NATURAL RESOURCES COMMITTEE

AN ACT

RELATING TO WATER; PROVIDING FOR A WATER USE PLANNING PERIOD OF
ONE HUNDRED YEARS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 72-1-9 NMSA 1978 (being Laws 1985,
Chapter 198, Section 1, as amended) is amended to read:

"72-1-9. MUNICIPAL, COUNTY, MEMBER-OWNED COMMUNITY WATER
SYSTEMS, SCHOOL DISTRICT AND STATE UNIVERSITY WATER DEVELOPMENT
PLANS--PRESERVATION OF MUNICIPAL, COUNTY AND STATE UNIVERSITY
WATER SUPPLIES.--

A. It is recognized by the state that it promotes
the public welfare and the conservation of water within the
state for municipalities, counties, school districts, state
universities, member-owned community water systems, special
water users' associations and public utilities supplying water

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1 to municipalities or counties to plan for the reasonable
2 development and use of water resources. [~~The state further~~
3 ~~recognizes the state engineer's administrative policy of not~~
4 ~~allowing municipalities, member-owned community water systems,~~
5 ~~counties and state universities to acquire and hold unused~~
6 ~~water rights in an amount greater than their reasonable needs~~
7 ~~within forty years.~~]

8 B. Municipalities, counties, school districts,
9 state universities, member-owned community water systems,
10 special water users' associations and public utilities
11 supplying water to municipalities or counties shall be
12 allowed a water use planning period not to exceed [~~forty~~] one
13 hundred years, and water rights for municipalities, counties,
14 school districts, state universities, member-owned community
15 water systems, special water users' associations and public
16 utilities supplying water to such municipalities or counties
17 shall be based upon a water development plan, the
18 implementation of which shall not exceed a [~~forty-year~~] one-
19 hundred-year period from the date of the application for an
20 appropriation or a change of place or purpose of use,
21 pursuant to a water development plan or for preservation of a
22 municipal, county, school district, member-owned community
23 water system or state university water supply for reasonably
24 projected additional needs within [~~forty~~] one hundred years."

25 Section 2. Section 72-1-10 NMSA 1978 (being Laws 2003,

1 Chapter 437, Section 1, as amended) is amended to read:

2 "72-1-10. WATER UTILITY AUTHORITY--CREATED--
3 MEMBERSHIP--ADMINISTRATION OF UTILITY.--

4 A. The "Albuquerque-Bernalillo county water
5 utility authority" is created. The membership of the board
6 of directors of the authority shall consist of seven members.
7 The municipal members shall be the mayor and three city
8 councilors appointed by the Albuquerque city council. The
9 county members shall be three county commissioners appointed
10 by the Bernalillo county board of county commissioners. A
11 city councilor member shall designate another city councilor
12 to serve in the member's absence. A county commissioner
13 member shall designate another county commissioner to serve
14 in the member's absence. The mayor shall designate the chief
15 executive officer of the municipality, a city councilor or a
16 county commissioner to serve in the mayor's absence. City
17 councilors shall serve one-year terms at the city council
18 president's discretion. County commissioners shall serve
19 one-year terms at the county commission [~~chairman's~~] chair's
20 discretion. The authority is subject to the state
21 Procurement Code and other applicable state laws. The
22 authority is a public body politic and corporate, separate
23 and apart from the city of Albuquerque and Bernalillo county.
24 The authority is a political subdivision of the state.

25 B. The authority:

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1 (1) shall set policy and regulate, supervise
2 and administer the water and wastewater utility of
3 Albuquerque and Bernalillo county, including the
4 determination and imposition of rates for services;

5 (2) is granted all powers necessary and
6 appropriate to carry out and effectuate its public and
7 corporate purposes, including the authority to adopt
8 procedural rules; and

9 (3) is authorized to use city or county
10 procurement processes or to contract with the city or county
11 to further its public and corporate purposes.

12 C. The authority may acquire, maintain, contract
13 for, condemn or protect water and wastewater facilities. The
14 city of Albuquerque and Bernalillo county may delegate any
15 additional power or duty conferred by Sections 3-27-2 and
16 3-27-3 NMSA 1978 to the authority to exercise and administer.

17 D. In exercising its power to acquire, maintain,
18 contract for or condemn water and wastewater facilities, the
19 authority shall not act so as to physically isolate and make
20 nonviable any portion of the water or wastewater facilities,
21 within or outside of Bernalillo county.

22 E. The authority may adopt resolutions and rules
23 necessary to exert the power conferred by this section.

24 F. For the purposes of acquiring, maintaining,
25 contracting for, condemning or protecting water and

1 wastewater facilities, the jurisdiction of the authority
2 extends within and outside of the boundaries of Bernalillo
3 county to the territory physically occupied by the water and
4 wastewater facilities and to privately owned water and
5 wastewater facilities interconnected to the utility system.

6 The authority may:

7 (1) acquire, maintain, contract for or
8 condemn facilities for the collection, treatment and disposal
9 of wastewater;

10 (2) condemn private property for the
11 construction, maintenance and operation of wastewater
12 facilities; and

13 (3) acquire, maintain, contract for or
14 condemn for use as part of the utility system privately owned
15 water and wastewater facilities used for the collection,
16 treatment and disposal of wastewater of the authority or its
17 customers.

18 G. The authority is subject to:

19 (1) the limitations imposed by Section
20 72-1-9 NMSA 1978 regarding water rights obtained or water
21 rights condemned pursuant to a water development plan;

22 (2) the provisions of the Eminent Domain
23 Code; and

24 (3) the provisions of Chapter 72 NMSA 1978
25 regarding any change to the point of diversion or the place

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1 or purpose of use of any water right to any place selected by
2 the authority in order to make the water available to the
3 authority.

4 H. The authority is liable to the condemnee
5 pursuant to the provisions of the Eminent Domain Code for the
6 value of a water right as well as the market value of real
7 property to which the water right is appurtenant if:

8 (1) the authority condemns water rights,
9 either within or outside of the boundaries of Bernalillo
10 county that are appurtenant to real property that has been in
11 active agricultural operation; and

12 (2) the condemnation of the water right by
13 the authority requires the permanent retirement from
14 agricultural operation of some or all of the real property to
15 which the water rights are appurtenant.

16 I. The authority is not subject to the
17 jurisdiction of or approval from the public regulation
18 commission. The authority is not subject to the provisions
19 of the Public Utility Act. The authority is granted a water
20 use planning period not to exceed ~~[forty]~~ one hundred years
21 as set forth in Section 72-1-9 NMSA 1978.

22 J. The city of Albuquerque or Bernalillo county
23 may, by ordinance or resolution, grant the authority a
24 franchise for the operation, construction and maintenance of
25 the utility system and for the use and rental of rights of

1 way in exchange for consideration.

2 K. The authority may issue utility system revenue
3 bonds and obligations pursuant to the Public Securities
4 Short-Term Interest Rate Act for acquiring real and personal
5 property needed for the utility system and for extending,
6 enlarging, renovating, repairing or otherwise improving water
7 facilities and wastewater facilities or for any combination
8 of these purposes. The authority may issue revenue
9 anticipation notes with maturities not exceeding thirteen
10 months upon terms approved by the board of directors. The
11 authority may pledge irrevocably net revenues from the
12 operation of the utility system for payment of the principal,
13 premiums and interest on the revenue bonds or other
14 obligations. It is unlawful to divert, use or expend money
15 received from the issuance of utility system revenue bonds
16 for any purpose other than the purpose for which the utility
17 system revenue bonds were issued. Obligations, including
18 bond anticipation notes, issued pursuant to the Public
19 Securities Short-Term Interest Rate Act shall be sold
20 pursuant to the terms of that act. Utility system revenue
21 bonds:

22 (1) may have interest, appreciated principal
23 value or any part thereof payable at intervals or at maturity
24 as the authority determines;

25 (2) may be subject to prior redemption at

.164345.1

1 the authority's option at such time and upon such terms and
2 conditions with or without the payment of a premium as
3 determined by the authority;

4 (3) may mature at any time not exceeding
5 fifty years after the date of issuance;

6 (4) may be serial in form and maturity or
7 may consist of one bond payable at one time or in
8 installments or may be in another form as determined by the
9 authority;

10 (5) shall be sold for cash at above or below
11 par and at a price that results in a net effective interest
12 rate that does not exceed the maximum permitted by the Public
13 Securities Act; and

14 (6) may be sold at a public or negotiated
15 sale.

16 L. The bonds authorized by the authority and
17 their income shall be exempt from all taxation by the state
18 or its political subdivisions.

19 M. The members of the board of directors of the
20 authority may adopt a resolution declaring the necessity for
21 the issuance of utility system revenue bonds or other
22 obligations and may authorize the issuance of utility system
23 revenue bonds or other obligations by an affirmative vote of
24 a majority of all members of the board of directors of the
25 authority. Utility revenue bonds and the resolution

.164345.1

1 authorizing their issuance shall not be subject to the
2 approval of the public regulation commission pursuant to
3 Section 3-23-3 NMSA 1978 or subject to voter approval
4 pursuant to Section 3-23-2 NMSA 1978.

5 N. Except for the purpose of refunding previous
6 utility system revenue bond issues, the authority may not
7 sell utility system revenue bonds payable from pledged
8 revenues after the expiration of three years from the date of
9 the resolution authorizing their issuance. Any period of
10 time during which a utility system revenue bond is in
11 litigation shall not count toward the determination of the
12 expiration date of that issue."

13 Section 3. Section 72-6-3 NMSA 1978 (being Laws 1967,
14 Chapter 100, Section 3, as amended) is amended to read:

15 "72-6-3. OWNER MAY LEASE USE OF WATER.--

16 A. An owner may lease to any person all or any
17 part of the water use due [~~him~~] the owner under [~~his~~] the
18 owner's water right, and the owner's water right shall not be
19 affected by the lease of the use. The use to which the owner
20 is entitled under [~~his~~] the owner's right shall, during the
21 exercise of the lease, be reduced by the amount of water so
22 leased. Upon termination of the lease, the water use and
23 location of use subject to the lease shall revert to the
24 owner's original use and location of use.

25 B. The lease may be effective for immediate use

1 of water or may be effective for future use of the water
2 covered by the lease; however, the lease shall not be
3 effective to cumulate water from year to year or to
4 substantially enlarge the use of the water in such manner
5 that it would injure other water users. The lease shall not
6 toll any forfeiture of water rights for nonuse, and the owner
7 shall not, by reason of the lease, escape the forfeiture for
8 nonuse prescribed by law; provided, however, that the state
9 engineer shall notify both the owner and the lessee of
10 declaration of ~~[nonuser]~~ nonuse as provided in Sections
11 72-5-28 and 72-12-8 NMSA 1978. The initial or any renewal
12 term of a lease of water use shall not exceed ten years,
13 except as provided in Subsection C of this section.

14 C. A water use may be leased for ~~[forty]~~ one
15 hundred years by municipalities, counties, state
16 universities, special water users' associations, public
17 utilities supplying water to municipalities or counties and
18 member-owned community water systems as lessee and shall be
19 entitled to the protection of the ~~[forty-year]~~ one-hundred-
20 year water use planning period as provided in Section 72-1-9
21 NMSA 1978. A water use deriving from an acequia or community
22 ditch organized pursuant to Chapter 73, Article 2 or 3 NMSA
23 1978, whether owned by a water right owner under the acequia
24 or community ditch or by the acequia or community ditch, may
25 be leased for a term not to exceed ten years."

underscored material = new
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HOUSE BILL

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

FOR THE WATER AND NATURAL RESOURCES COMMITTEE

AN ACT

MAKING AN APPROPRIATION FOR THE WATER TRUST FUND.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. APPROPRIATION.--Sixty million dollars (\$60,000,000) is appropriated from the general fund to the water trust fund for expenditure in fiscal year 2007 and subsequent fiscal years to carry out the purposes of the Water Project Finance Act. Any unexpended or unencumbered balance remaining at the end of a fiscal year shall not revert to the general fund.

.163654.1

HOUSE BILL

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

FOR THE WATER AND NATURAL RESOURCES COMMITTEE

AN ACT

MAKING AN APPROPRIATION FOR THE NON-NATIVE PHREATOPHYTE REMOVAL
AND RIPARIAN RESTORATION AND FOREST HEALTH MANAGEMENT PROGRAMS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. APPROPRIATION.--Ten million dollars
(\$10,000,000) is appropriated from the general fund to the
board of regents of New Mexico state university for expenditure
in fiscal years 2008 and 2009 for the soil and water
conservation commission to manage and administer non-native
phreatophyte removal and riparian restoration according to the
non-native phreatophyte/watershed management plan program. Any
unexpended or unencumbered balance remaining at the end of
fiscal year 2009 shall revert to the general fund.

.163655.2

SENATE BILL

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

FOR THE ECONOMIC AND RURAL DEVELOPMENT AND TELECOMMUNICATIONS
COMMITTEE AND THE WATER AND NATURAL RESOURCES COMMITTEE

AN ACT

MAKING AN APPROPRIATION TO NEW MEXICO STATE UNIVERSITY FOR
RESEARCH TO SUPPORT THE CHILE INDUSTRY IN NEW MEXICO.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. APPROPRIATION.--Seven million dollars
(\$7,000,000) is appropriated from the general fund to the board
of regents of New Mexico state university for expenditure in
fiscal year 2008 and subsequent fiscal years for research to
support the chile industry in New Mexico. Any unexpended or
unencumbered balance remaining at the end of a fiscal year
shall not revert to the general fund.

.163812.1

SENATE BILL

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

FOR THE WATER AND NATURAL RESOURCES COMMITTEE

AN ACT

RELATING TO MISCELLANEOUS NATURAL RESOURCES MATTERS; AMENDING
THE NATURAL RESOURCES TRUSTEE ACT TO PROVIDE FOR MANAGEMENT AND
TO USE OF MONEY IN THE NATURAL RESOURCES TRUSTEE FUND AND TO
PROVIDE FOR A GENERAL FUND APPROPRIATION FOR OPERATING EXPENSES
OF THE OFFICE OF THE NATURAL RESOURCES TRUSTEE; MAKING
APPROPRIATIONS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 75-7-1 NMSA 1978 (being Laws 1993,
Chapter 292, Section 1) is amended to read:

"75-7-1. SHORT TITLE.--~~[This act]~~ Chapter 75, Article 7
NMSA 1978 may be cited as the "Natural Resources Trustee Act"."

Section 2. Section 75-7-2 NMSA 1978 (being Laws 1993,
Chapter 292, Section 2) is amended to read:

"75-7-2. NATURAL RESOURCES TRUSTEE--OFFICE OF NATURAL

1 RESOURCES TRUSTEE.--

2 A. The "natural resources trustee" is created.
3 [He] The trustee is appointed by and serves at the pleasure of
4 the governor pursuant to the provisions of the federal
5 Comprehensive Environmental Response, Compensation, and
6 Liability Act of 1980, as amended by the federal Superfund
7 Amendments and Reauthorization Act of 1986, the Federal Water
8 Pollution Control Act and any other applicable federal law.
9 The natural resources trustee shall act on behalf of the public
10 as trustee of natural resources within the state or belonging
11 to, managed by, controlled by or appertaining to the state,
12 including protecting and representing the state's interest
13 under applicable federal laws regarding injury to, destruction
14 of or loss of natural resources in the state.

15 B. The "office of natural resources trustee" is
16 created. The office shall be administratively attached to the
17 department of environment. The administrative head of the
18 office of natural resources trustee is the natural resources
19 trustee. For purposes of this subsection, the term
20 "administratively attached" means the same as specified in
21 Section 9-1-7 NMSA 1978."

22 Section 3. Section 75-7-5 NMSA 1978 (being Laws 1993,
23 Chapter 292, Section 5, as amended) is amended to read:

24 "75-7-5. NATURAL RESOURCES TRUSTEE FUND.--

25 A. The "natural resources trustee fund" is created

1 in the state treasury. Money appropriated to the fund or
2 accruing to it through gifts, grants, fees, penalties, bequests
3 or any other source shall be delivered to the state treasurer
4 and deposited in the fund. Money recovered for the state by or
5 on behalf of the natural resources trustee shall be deposited
6 in the natural resources trustee fund. The fund shall be
7 administered by the natural resources trustee as a separate
8 account and may consist of subaccounts that the natural
9 resources trustee deems necessary to carry out the purposes of
10 the fund. Disbursements from the fund shall be made upon
11 warrants drawn by the secretary of finance and administration
12 pursuant to vouchers signed by the natural resources trustee or
13 ~~[his]~~ the trustee's designated representative. Money in the
14 fund shall not revert to the general fund at the end of a
15 fiscal year.

16 B. Pursuant to the following criteria, money in the
17 natural resources trustee fund shall be used to carry out the
18 provisions of the Natural Resources Trustee Act by restoring,
19 replacing or acquiring natural resources in an area where
20 natural resources have been injured, destroyed or lost,
21 provided that money deposited in the fund because of injury to,
22 destruction of or loss of natural resources in an area shall be
23 disbursed to restore, replace or acquire natural resources in
24 that same area:

25 (1) if an expenditure from the fund is

1 necessary to comply with a court order or court-approved
2 settlement or to match federal funds, then, pursuant to
3 Sections 6-3-23 through 6-3-25 NMSA 1978, the natural resources
4 trustee may request a budget increase and, if approved, the
5 amount of the expenditure is appropriated; ~~and~~

6 (2) if money is received for reimbursement of
7 assessment costs, then the natural resources trustee may expend
8 money for injury assessment, and money is appropriated in that
9 amount for that purpose; and

10 ~~[(2)]~~ (3) any other expenditures from the fund
11 shall be made only pursuant to appropriation by the
12 legislature.

13 C. In addition to expenditures made pursuant to
14 Subsection B of this section, money ~~[in the natural resources~~
15 ~~trustee fund]~~ shall be appropriated annually by the legislature
16 from the general fund for the purpose of providing for
17 necessary personnel and other costs of the natural resources
18 trustee, the attorney general and the office of natural
19 resources trustee in carrying out the provisions of the Natural
20 Resources Trustee Act, including the cost of investigation,
21 assessment, collection or enforcement.

22 D. For purposes of this section, "assessment costs"
23 means the costs of restoration and the costs of collecting,
24 compiling and analyzing information, statistics or data to
25 determine damages for injuries to natural resources pursuant to

1 the Natural Resources Trustee Act.

2 ~~[D-]~~ E. Money in the natural resources trustee fund
3 shall be invested as other state funds are invested, and
4 interest and earnings from the fund shall not revert to the
5 general fund but shall be credited to the natural resources
6 trustee fund."

7 Section 4. APPROPRIATION.--Five hundred thousand dollars
8 (\$500,000) is appropriated from the general fund to the office
9 of the natural resources trustee for expenditure in fiscal year
10 2008 for the operations of the office of the natural resources
11 trustee and to carry out the provisions of the Natural
12 Resources Trustee Act. Any unexpended or unencumbered balance
13 remaining at the end of the fiscal year 2008 shall revert to
14 the general fund.

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underscored material = new
[bracketed material] = delete

HOUSE BILL

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

FOR THE WATER AND NATURAL RESOURCES COMMITTEE

AN ACT

MAKING AN APPROPRIATION TO INITIATE A PLAN TO REDUCE EXPOSURE
TO MERCURY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. APPROPRIATION.--Two hundred thousand dollars
(\$200,000) is appropriated from the general fund to the
department of environment for expenditure in fiscal year 2008
to initiate, with the assistance of the department of health,
a comprehensive plan to reduce human and wildlife exposure to
mercury. Any unexpended or unencumbered balance remaining at
the end of fiscal year 2008 shall revert to the general fund.
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underscored material = new
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HOUSE BILL

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

FOR THE WATER AND NATURAL RESOURCES COMMITTEE

AN ACT

MAKING AN APPROPRIATION TO THE DEPARTMENT OF ENVIRONMENT TO PAY
FOR EXPENSES OF A TASK FORCE ON ILLEGAL DUMPING.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. APPROPRIATION.--One hundred thousand dollars
(\$100,000) is appropriated from the general fund to the
department of environment for expenditure in fiscal year 2008
to pay for expenses of a task force on illegal dumping. Any
unexpended or unencumbered balance remaining at the end of
fiscal year 2008 shall revert to the general fund.

.163883.1

HOUSE JOINT MEMORIAL

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

FOR THE WATER AND NATURAL RESOURCES COMMITTEE

A JOINT MEMORIAL

REQUESTING THE CREATION OF A COALITION FOR A CLEAN NEW MEXICO
TO COMBAT ILLEGAL DUMPING THROUGHOUT THE STATE.

WHEREAS, there is a consistent and potentially increasing
problem of illegal dumping on private and public lands within
New Mexico; and

WHEREAS, illegal dumping has a significant adverse impact
on public health and safety, the environment, water quality and
economic sustainability; and

WHEREAS, recent rainfall throughout the state has
demonstrated that areas are more susceptible to flooding when
waste blocks ravines, creeks, culverts, arroyos and drainage
basins as a result of illegal dumping; and

WHEREAS, education is an essential component to address
the issue of illegal dumping by promoting public awareness,

1 providing information about legal options for proper disposal
2 and recycling and by building consensus among citizens,
3 government officials and private industry to find solutions to
4 the problem; and

5 WHEREAS, public participation and collaboration must be
6 key components in identifying illegal dump sites, available
7 resources and appropriate mitigation measures; in developing
8 procedures for enforcement and prosecution; and in leveraging
9 funding;

10 NOW, THEREFORE, BE IT RESOLVED BY THE LEGISLATURE OF THE
11 STATE OF NEW MEXICO that the department of environment, the
12 United States department of the interior bureau of land
13 management and the New Mexico association of counties be
14 requested to form a coalition for a clean New Mexico composed
15 of representatives of federal and state agencies, municipal and
16 county governments, tribes, industry, nonprofit and
17 environmental groups, recycling coalitions, solid waste
18 authorities, soil and water conservation districts, religious
19 groups and congressional staff to develop a strategy and make
20 recommendations on policy direction, standards and planning to
21 combat illegal dumping throughout New Mexico; and

22 BE IT FURTHER RESOLVED that the coalition be requested to
23 complete a strategic plan and present its recommendations for
24 implementation to the appropriate committee of the legislature
25 by January 1, 2008; and

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1 BE IT FURTHER RESOLVED that copies of this memorial be
2 transmitted to the secretary of environment, the United States
3 secretary of the interior and the director of the New Mexico
4 association of counties.

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HOUSE BILL

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

FOR THE WATER AND NATURAL RESOURCES COMMITTEE

AN ACT

MAKING AN APPROPRIATION TO THE UNIVERSITY OF NEW MEXICO FOR THE
UTTON TRANSBOUNDARY RESOURCES CENTER TO PROVIDE OMBUDSMAN
SERVICES IN WATER RIGHTS ADJUDICATIONS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. APPROPRIATION.--Two hundred eighty-two
thousand dollars (\$282,000) is appropriated from the general
fund to the board of regents of the university of New Mexico
for expenditure in fiscal year 2008 for the Utton transboundary
resources center at the school of law to provide ombudsman
services on the San Juan, the Chama and the lower Rio Grande
water rights adjudications. Any unexpended or unencumbered
balance remaining at the end of fiscal year 2008 shall revert
to the general fund.

.163940.1

SENATE BILL

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

FOR THE WATER AND NATURAL RESOURCES COMMITTEE

AN ACT

MAKING AN APPROPRIATION FOR ACEQUIA GOVERNANCE EDUCATION,
TRAINING AND TECHNICAL ASSISTANCE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. APPROPRIATION.--Five hundred thousand dollars
(\$500,000) is appropriated from the general fund to the local
government division of the department of finance and
administration for expenditure in fiscal year 2008 to pay for
acequia governance education, training and technical
assistance. Any unexpended or unencumbered balance remaining
at the end of fiscal year 2008 shall revert to the general
fund.

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HOUSE BILL
48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007
INTRODUCED BY

FOR THE WATER AND NATURAL RESOURCES COMMITTEE

AN ACT
MAKING AN APPROPRIATION TO THE BOARD OF REGENTS OF THE NEW
MEXICO INSTITUTE OF MINING AND TECHNOLOGY FOR STATEWIDE AQUIFER
MAPPING AND CHARACTERIZATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. APPROPRIATION.--Six hundred fifty thousand
dollars (\$650,000) is appropriated from the general fund to the
board of regents of New Mexico institute of mining and
technology for expenditure in fiscal year 2008 and subsequent
fiscal years for the bureau of geology and mineral resources to
conduct statewide aquifer mapping and characterization. Any
unexpended or unencumbered balance remaining at the end of a
fiscal year shall not revert to the general fund.
.164039.1

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SENATE BILL

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

FOR THE WATER AND NATURAL RESOURCES COMMITTEE

AN ACT

MAKING AN APPROPRIATION TO NEW MEXICO HIGHLANDS UNIVERSITY FOR
THE OPERATION OF THE FORESTRY AND WATERSHED RESTORATION
INSTITUTE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. APPROPRIATION.--Four hundred thirty-three
thousand dollars (\$433,000) is appropriated from the general
fund to the board of regents of New Mexico highlands university
for expenditure in fiscal year 2008 to operate the forestry and
watershed restoration institute. Any unexpended or
unencumbered balance remaining at the end of fiscal year 2008
shall revert to the general fund.

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HOUSE BILL

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

FOR THE WATER AND NATURAL RESOURCES COMMITTEE

AN ACT

MAKING AN APPROPRIATION FOR BENEFICIAL USE OF GILA RIVER WATER
PURSUANT TO THE ARIZONA WATER SETTLEMENTS ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. APPROPRIATION.--Four million six hundred
thousand dollars (\$4,600,000) is appropriated from the general
fund to the interstate stream commission for expenditure in
fiscal years 2008 through 2014 to comply with the requirement
in the 2004 Arizona Water Settlements Act to consider the
impacts to endangered species and the environment, protect the
invaluable ecology of the Gila river basin in New Mexico and
create by 2014 a plan that maximizes beneficial use of New
Mexico's water pursuant to that act. The interstate stream
commission shall make annual reports to the appropriate interim
committee of the legislature on the status of planning

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1 resulting from this appropriation. Any unexpended or
2 unencumbered balance remaining at the end of fiscal year 2014
3 shall revert to the general fund.

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HOUSE JOINT MEMORIAL

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

FOR THE WATER AND NATURAL RESOURCES COMMITTEE

A JOINT MEMORIAL

REQUESTING THE OFFICE OF THE STATE ENGINEER TO ADOPT A PLAN FOR
ACQUIRING WATER RIGHTS DATA FOR THE WATERS PROGRAM WITHOUT
REMOVAL OF ORIGINAL FILES FROM THE ROSWELL DISTRICT 2 OFFICE OF
THE STATE ENGINEER.

WHEREAS, the Pecos valley water users organization is a
quasi-public organization composed of representatives of public
agencies, including county and municipal governments,
irrigation and conservancy districts and others located in the
lower Pecos valley of New Mexico; and

WHEREAS, the primary focus of the Pecos valley water users
organization is water use, availability and planning in the
area included within the lower Pecos valley in New Mexico; and

WHEREAS, the water rights files of the state engineer in
the Roswell district 2 office contain pertinent documents

1 relating to historical and current data regarding water use and
2 supply in the area; and

3 WHEREAS, the documents date back to the middle of the
4 nineteenth century and consist of water well logs, hydrological
5 studies and reports, reports of water use, transactional
6 histories of water rights ownerships and transfers and similar
7 data; and

8 WHEREAS, information in the files of the district 2 office
9 of the state engineer is critical to the continuing
10 administration and understanding of the water situation in the
11 area and is essential to the needs of individual water users on
12 a daily and continuing basis; and

13 WHEREAS, the state engineer has announced his intention to
14 transfer the records and data from the Roswell district 2
15 office to Albuquerque for copying, restructuring and
16 reassembling, and to then transfer the original data to Santa
17 Fe for archival storage and to the WATERS database for access
18 through the internet; and

19 WHEREAS, the state engineer has not specified the length
20 of time that the records would be missing from the Roswell
21 district 2 office and thus unavailable for use by water users,
22 researchers and abstracters, thereby making access to such
23 information unreasonably difficult; and

24 WHEREAS, the Pecos valley water users organization
25 believes that the state engineer's proposed actions will

1 undoubtedly result in loss of data, in realignment of data and
2 in general confusion; and

3 WHEREAS, it would appear that the better solution would be
4 to copy or scan all of the files completely and intact, without
5 realignment or restructuring, in the Roswell district 2 office,
6 and then to forward the scanned data or copies to Albuquerque
7 for further processing;

8 NOW, THEREFORE, BE IT RESOLVED BY THE LEGISLATURE OF THE
9 STATE OF NEW MEXICO that the office of the state engineer be
10 requested to reconsider the plan for removal of the water
11 rights files from the Roswell district 2 office and, instead,
12 adopt a plan to acquire the data necessary for the WATERS
13 database within that office, without restructuring or
14 realignment into various categories, and to then forward the
15 data to Albuquerque for further processing; and

16 BE IT FURTHER RESOLVED that copies of this memorial be
17 transmitted to the state engineer and the governor.